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# State Trials.

VOL. IV.

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A  
COMPLETE COLLECTION  
OF

State Trials

AND

PROCEEDINGS FOR HIGH TREASON AND OTHER  
CRIMES AND MISDEMEANORS

FROM THE

EARLIEST PERIOD TO THE YEAR 1783,

WITH NOTES AND OTHER ILLUSTRATIONS:

COMPILED BY

T. B. HOWELL, Esq. F.R.S. F.S.A.

INCLUDING,

IN ADDITION TO THE WHOLE OF THE MATTER CONTAINED IN THE  
FOLIO EDITION OF HARGRAVE,  
UPWARDS OF TWO HUNDRED CASES NEVER BEFORE COLLECTED;

TO WHICH IS SUBJOINED

*A TABLE OF PARALLEL REFERENCE,*

RENDERING THIS EDITION APPLICABLE TO THOSE BOOKS OF AUTHORITY IN  
WHICH REFERENCES ARE MADE TO THE FOLIO EDITION.

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IN TWENTY-ONE VOLUMES.

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VOL. IV.

16 CHARLES I. TO 1 CHARLES II.....1640—1649.

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L O N D O N :

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# COBBETT'S COMPLETE COLLECTION

OF

## State Trials.

151. Proceedings in Parliament against JOHN LORD FINCH,\* Baron of FORDWICH, Lord Keeper, for High Treason: 16 CHARLES I. A. D. 1640. [4 Rushworth, 124. 2 Cobb. Parl. Hist. 685.]

THE House of Commons having secured that great statesman the earl of Strafford, and that zealous Churchman archbishop Laud; began to prepare an Impeachment against the great officer of the law, the Lord-Keeper Finch, of High-Treason.

December 14, 1640, a Committee was appointed to prepare a Charge against him; of which he having notice, sent to the House of Commons a Letter, desiring to be admitted to speak for himself, before any Vote passed against him. Upon this Letter there arose a great debate in the house, and after some time spent therein, it was granted him; and Monday Dec. 21, was appointed for the hearing of him.

On Monday he was admitted in this manner; there was a chair set for him to make use of if he pleased, and a stool to lay the purse upon, a bible on the side of the bar on the left hand as you come in; he himself brought in the purse, and laid it in the chair, but would not sit down himself nor put on his hat, though he was moved to it by Mr. Speaker, but spake all the while bare-headed and standing; the Serjeant at Arms attending on the house, standing by him with the mace on his shoulder: And spake as follows:

"Mr. Speaker; I do first present my most humble thanks to this honourable assembly for this favour vouchsafed me, in granting me admittance to their presence, and do humbly beseech them to believe it is no desire to preserve myself or my fortune but to deserve the good

opinion of those that have drawn me hither. I do profess in the presence of Him that knoweth all hearts, that I had rather go from door to door, and crave *da obolum Belizario*, &c. with the good opinion of this assembly, than live and enjoy all the honours and fortunes I am capable of. I do not come hither with an intention to justify my words, my actions, or my opinions; but to make a plain and clear narration for myself, and then humbly to submit to the wisdom and justice of this house myself, and all that concerns me.

"I do well understand, Mr. Speaker, with what disadvantage any man can speak in his own cause, and if I could have told how to have transmitted my thoughts and actions, by a clearer representation of another (I do so much defy my own judgment in working, and my ways in expressing), that I should have been a most humble suitor another might have done it. But this house will not take words, but with clear and ingenuous dealing; and therefore I shall beseech them to think, I come not hither with a set or studied speech, I come to speak my heart, and to speak it clearly and plainly, and then leave it to your clemency and justice: and I hope if any thing shall slip from me, to work contrary to my meaning, or intention, disorderly or ill-placed, you will be pleased to make a favourable construction, and leave me the liberty of explanation, if there shall be any; but I hope there shall be no cause for it.

"I hope, for my affection in Religion no man doubteth me; what my education, what, and under whom for many years, is well known; I lived near thirty years in the Society of Gray's Inn: and if one that was a reverend preacher in my time (Dr. Sibbs) were now alive, he were able to give testimony to this house, that when a party ill-affected in Religion sought to weary

\* This Proceeding explains the manner of obtaining the Judges Opinions in Mr. Hampden's Case about Ship-Money, vol. 3, p. 825; as also the Lord Keeper's Reasons for what he did as Speaker in the Parliament A. D. 1629, for which see vol. 3, p. 435.

him, and tire him out, he had his chiefest encouragement from me.

"I have now, Mr. Speaker, been fifteen years of the King's Council; from the first hour to this minute, no man is able to say that ever I was author, adviser, or consentor to any project. It pleased the king, my gracious master, after I had served him divers years, to prefer me to two places; to be Chief-Justice of the Common Pleas, and then Keeper of his Great-Seal: I say it in the presence of God, I was so far from the thought of the one, and from the ambition of the other, that if my master's grace and goodness had not been, I had never enjoyed those honours.

"I cannot tell, Mr. Speaker, nor I do not know what particulars there are, that may draw me into your disfavour or ill opinion, and therefore I shall come very weakly armed; yet to those that either in my own knowledge, or by such a knowledge as is given me, and not from any in this house, I shall speak somewhat, that I hope, being truth, and accompanied with clearness and ingenuity, will at last procure some allay of that ill opinion which may perhaps be conceived of me.

"Mr. Speaker, I had once the honour to sit in the place that you do: from the first time I came thither to this unfortunate time, I do appeal to all that were here then, if I served you not with candour. All office I never did to any of the house, good offices I have witnesses enough I did many; I was so happy, that upon an occasion which once happened, I received an expression and testimony of the good affection of this house towards me. For the last unhappy day, I had great share in the unhappiness and sorrow of it. I hope there are enough do remember, no man within the walls of this house did express more symptoms of sorrow, grief, and distraction, than I did.

"After an adjournment for two or three days, it pleased his majesty to send for me, to let me know that he could not so resolve of things as he desired, and therefore was desirous that there might be an adjournment for some few days more. I protest I did not then discern in his majesty, and I believe it was not in his thoughts, to think of the dissolving of this assembly; but was pleased, in the first place, to give me a command to deliver his pleasure to the house for an adjournment for some few days, till the Monday following, as I remember, and commanded me withal to deliver his pleasure, that there should be no further speeches, but forthwith upon the delivery of the message come and wait upon him: he likewise commanded me, if questions were offered to be put, upon my allegiance I should not dare to do it. How much I did then in all humbleness reason with his majesty, is not for me here to speak; only thus much let me say, I was no author of any counsel in it. I was only a person in receiving commission; I speak not this, as any thing I now produce or do invent, or take up for my own excuse, but that which is known to divers, and some honourable persons in this house, to

be most true. All that I will say for that, is humbly to beseech you all to consider, that if it had been any man's case, as it was mine, between the displeasure of a gracious king, and the ill opinion of an honourable assembly; I beseech you lay all together, lay my first actions and behaviour with the last, I shall submit to your honourable and favourable constructions.

"For the Shipping business, my opinion of that cause hath lain heavy upon me; I shall clearly and truly present unto you what every thing is, with this protestation, that if in reckoning up my own opinion what I was of, or what I delivered, any thing of it be displeasing, or contrary to the opinion of this house, that I am far from justifying of it, but submit that and all other my actions, to your wisdom and goodness.—Mr. Speaker, the first writs that were sent out about the Shipping-business, I had no more knowledge of, and was as ignorant as any one member of this house, or any man in the kingdom. I was never the author nor adviser of it, and will boldly say, from the first to this hour, I did never advise nor counsel the setting forth of any Ship-Writs in my life.

"Mr. Speaker, it is true that I was made Chief-Justice of the Common-Pleas some four days before the Ship-Writs went out to the ports and maritime places; as I do remember, the 20th of Oct. 1634, they do bear *teste*, and I was sworn justice the 16th of October: so as they went out in that time, but without my knowledge or privy, the God of Heaven knows this to be true.

"Mr. Speaker, afterwards his majesty was pleased to command my Lord Chief-Justice of the King's-Bench, that then was, sir Thomas Richardson, and Chief Baron of the Exchequer that now is, and myself, then Chief Justice of the Common-pleas, to take into consideration the Precedents then brought unto us; which we did, and after returned to his majesty, what we had found out of those precedents. It is true, that afterwards his majesty did take into consideration, that if the whole kingdom were concerned, that it was not reason to lay the whole burthen upon the Cinque-Ports and Maritime towns. Thereupon, upon what ground his majesty took that into his consideration, I do confess I do know nothing of it. His majesty did command my Lord Chief-Justice that now is, my Lord Chief-Baron, and myself, to return our Opinions; Whether, when the whole kingdom is in danger, and the kingdom in general is concerned, it be not according to law and reason, that the whole kingdom, and his majesty, and all interested therein, should join in defending and preserving thereof? This was, in time, about 1634. In Michaelmas-term following, his majesty commanded me to go to all the Judges, and require their Opinions in particular. He commanded me to do it to every one, and to charge them upon their duty and allegiance to keep it secret\*.

\* See Peacham's Case, vol. 2, p. 88: and "Luders' Observations," there referred to.

"Mr. Speaker, it was never intended by his majesty (as professed by him) at that time, and so declared to all the Judges, that it was not required by him, to be such a binding Opinion to the Subject, as to hinder him from calling it in question, nor be binding to themselves, but that upon better reason and advice they may alter it; but desire their Opinions, for his own private reason. I know very well, that extrajudicial Opinions of Judges ought not to be binding. But I did think, and speak my heart and conscience freely; myself, and the rest of the Judges being sworn, and by our oaths tied to counsel the king, when he should require advice of us, that we were bound by our oaths and duties to return our Opinions. I did obey his majesty's command, and do here before the God of Heaven avow it. I did never use the least promise of preferment, or reward to any, nor did use the least menace; I did leave it freely to their own consciences and liberty; for I was left the liberty of my own by his majesty, and had reason to leave them the liberty of their own consciences. And I beseech you be pleased to have some belief, that I would not say this, but that I know the God of Heaven will make it appear; and I beseech you that extravagant speeches may not move against that which is a positive and clear truth.

"Mr. Speaker, in the discourse of this (as is between Judges) some small discourses sometimes arose, yet never was any cause wherein any Judges conferred, that were so little conferences as between me and them. Mr. Speaker, against a negative, I can say nothing; but I shall affirm nothing unto you, but by the grace of God, as I affirm it to be true, so I make no doubt of making it appear to be so. This Opinion was subscribed without solicitation; there was not any man of us, did make any doubt of subscribing our Opinion, but two, Mr. Justice Hutton, and Mr. Justice Croke. Mr. Justice Croke made not a scruple of the thing, but of the introduction; for it was thus: 'That whereas the Ports and the Maritime towns were concerned, there according to the precedents in former times, the charge lay on them. So when the kingdom was in danger, of which his majesty was the sole judge; whether it was not agreeable to law and reason, the whole kingdom to bear the charge?' I left this case with judge Croke.

"The next Term I spake with him, he could give me no resolution, because he had not seen the writs in former times: but did give his opinion, That when the whole kingdom was in danger, the charge of the defence ought to be borne by all. So of that Opinion of his, there was no need of a solicitation.

"I speak no more here, than I did openly in my argument in the Exchequer Chamber. This is the naked truth: for Mr. Justice Hutton, he did never subscribe at all. I will only say this, that I was so far from pressing him to give his Opinion, because he did ask time to consider of it, that I will boldly say, and make it good, that when his majesty would have had

him sometimes sent for, to give his Opinion, I beseeched his majesty to leave him to himself and his conscience: and that was the ill office I did.

"The Judges did subscribe in November or December 1635. I had no conference, nor, truly I think, by accident any discourse with any of the Judges touching their Opinions: for till February, 1636, there was no speech of it, for when they had delivered their Opinions, I did return according to my duty to my master the king, and delivered them to him; in whose custody they be.

"In February, 1636, upon a command that came from his majesty, by one of the then Secretaries of State, the Judges all assembled in Gray's-inn; we did then fall into a debate of the case then sent unto us, and we did then return our Opinion unto his majesty; there was then much discourse and great debate about it. Mine opinion and conscience at that time was agreeable to that opinion I then delivered. I did use the best arguments I could, for the maintenance of my opinion; and that was all I did.

"It is true, that then at that time, Mr. Justice Hutton, and Mr. Justice Croke, did not differ in the main point, which was this: 'When the kingdom was in danger, the charge ought to be borne by the whole kingdom.' But in this point, 'Whether the king was the sole judge of the danger,' they differed. So as there was between the first subscription, and this debate and consultation, some fifteen months difference.

"It is true, that all of them did then subscribe, both justice Hutton, and justice Croke, which was returned to his majesty, and after published by my Lord Keeper, my predecessor, in the Star-Chamber. For the manner of publishing it I will say nothing, but leave it to those, whose memories will call to mind what was then done. The reason of the subscription of justice Hutton and justice Croke, though they differed in opinion, grew from this, that was told them, from the rest of the Judges: 'That where the greater number did agree in their vote, the rest were involved and included.'

"And now I have faithfully delivered what I did in that business, till I came, which was afterwards, to my Argument in the Exchequer-Chamber: for the question was, a Scire Facias issued out of the Exchequer in that Case of Mr. Hampden's; of which I can say nothing, for it was there begun, and afterwards rejoined, to have advice of all the Judges.

"Mr. Speaker, amongst the rest, according to my duty, I argued the case. I shall not trouble you, to tell you what my Argument was, I presume there are copies enough of it; only I will tell you there are four things, very briefly, that I then declared. First, concerning the matter of danger, and necessity of the whole kingdom. I profess that there was never a judge in the kingdom did deliver an opinion, but that it must be in a case of apparent

danger. When we came to an argument of the case, it was not upon a matter of issue, but it was upon a demurrer; Whether the danger was sufficiently admitted in pleading, and therefore was not the thing that was in dispute, that was the first degree and step that led unto it. I did deliver myself as free and as clear as any man did, that the king ought to govern by the positive laws of the kingdom; that he could not alter nor change, nor innovate in matters of law, but by common consent in parliament. I did further deliver, that if this were used to make a further revenue or benefit to the king, or in any other way but in case of necessity, and for the preservation of the kingdom, the judgment did warrant no such thing: My Opinion in this business, I did in my conclusion of my Argument submit to the judgment of this house. I never delivered my Opinion, that money ought to be raised, but ships provided for the defence of this kingdom, and in that the writ was performed. And that the charge ought not to be in any case, but where the whole kingdom was in danger. And Mr. Justice Holtton, and Mr. Justice Croke, were of the same opinion with me.

"I do humbly submit, having related unto you my whole carriage in this business; humbly submitting myself to your grave and favourable censures, beseeching you not to think that I delivered these things with the least intention to subvert or subject the Common Law of the kingdom, or to bring in, or to introduce any new way of Government; it hath been far from my thoughts, as any thing under the heavens.

"Mr. Speaker, I have heard too that there hath been some ill opinion conceived of me about Forest business, which was a thing far out of the way of my study, as any thing I know toward the law. But it pleased his majesty, in the sickness of Mr. Noy, to give some short warning to prepare myself for that employment. When I came there, I did both the king and commonwealth acceptable service; for I did and dare be bold to say, with extreme danger to myself and fortune, (some do understand my meaning herein) run through that business, and left the Forest as much as was there. A thing in my judgment, considerable for the advantage of the commonwealth, as could be undertaken.

"When I went down about that employment, I satisfied myself about the matter of Perambulation. There were great difficulties of opinions, what Perambulation was. I did arm myself as well as I could, before I did any thing in it. I did acquaint those that were then Judges, in the presence of the noble lords, with such objections as I thought it my duty to offer out there. If they thought they were not objections of such weight as were fit to stir them, I would not do the king that disservice. They thought the Objections had such answers as might well induce the like upon a conference with the whole country: admitting me to come and confer with them, the country did unanimously subscribe.

"It fell out afterwards, that the king commanded me, and all this before I was Chief-Justice, to go into Essex, and did then tell me he had been informed, that the bounds of the Forest were narrower than in truth they ought to be; and I did according to his command. I will here profess that which is known to many, I had no thought or intention of enlarging the bounds of the Forest, further than II. and that part about it, for which there was a Perambulation about 26 Edw. 4. I desired the country to confer with me about it, if they were pleased to do it; and then according to my duty, I did produce those Records which I thought fit for his majesty's service, leaving them to discharge themselves as by law and justice they might do. I did never, in the least kind, go about to overthrow the Charter of the Forest. And did publish and maintain *Charta de Foresta*, as a sacred thing, and no man to violate it, and ought to be preserved for the king and commonwealth. I do in this humbly submit, and what I have done, to the goodness and justice of this house."

After his Lordship was retired, it was moved, That this admission of the Lord-Keeper might not be drawn into precedent; and in answer to what his lordship said,

Mr. Rigby made this following Speech:

"Mr. Speaker; Though my judgment prompts me to sit still and be silent, yet the duty I owe to my king, my country and my conscience, move me to stand up and speak. Mr. Speaker, had not this Syren so sweet a tongue, surely he could never have effected so much mischief to this kingdom: you know, sir, 'optimorum putrefactio pessima,' the best things putrefied become the worst; and as it is in the natural, so in the body politic; and what is to be done then, Mr. Speaker? We all know 'ense recidendum est,' the sword, justice must strike, 'ne pars sincera trahatur.'

"Mr. Speaker, it is not the voice, 'non vox sed votum,' not the tongue, but the heart and actions, that are to be suspected: for doth not our Saviour say it, 'Shew me thy faith by thy works, O man?' (St. James, not our Saviour saith it.) Now, Mr. Speaker, hath not this kingdom seen, (seen, say I?) nay felt and smarted under the cruelty of this man's justice? so malicious as to record it in every court of Westminster; as if he had not been contented with enslaving of us all, unless he entailed it to all posterity. Why should I believe words now, 'cum factum videam?' Shall we be so weak men, as when we have been injured and abused, will be gained again with fair words and compliments? Or, like little children, when we have been whipt and beaten, be pleased again with sweetmeats? Oh no, there be some birds

\* Mr. Rushworth says, "many were exceedingly taken with his eloquence and carriage, and it was a sad sight to see a person of his greatness, parts and favour, to appear in such a posture, before such an assembly, to plead for his life and fortunes."

in the summer of parliament will sing sweetly, who in the winter of per-secution, will for their prey ravenously fly at all, upon our goods, nay seize upon our persons; and hath it not been with this man so, with some in this assembly?

"Mr. Speaker, it hath been objected unto us, that in judgment you should think of mercy, and, 'be ye merciful as your heavenly Father 'is merciful;' now God Almighty grant that we may be so, and that our hearts and judgments may be truly rectified to know truly what is mercy: I say to know what is mercy: for there is the point, Mr. Speaker: I have heard of foolish pity, foolish pity; do we not all know the effects of it? And I have met with this epithet to mercy, 'crudelis misericordia;' and in some kind I think there may be a cruel mercy: I am sure that the Spirit of God said, Be not pitiful in judgment; nay it saith, be not pitiful of the poor in judgment: if not of the poor, then, *à latiori*, not of the rich; there is the emphasis. We see by the set and solemn appointment of our courts of justice, what provision the wisdom of our ancestors hath made for the preservation, honour, and esteem of justice; witness our frequent terms, sessions, and assizes, and in what pomp and state the Judges, in their circuits, by the sheriffs, knights and justices, and all the country, are attended oft-times for the hanging of a poor thief for the stealing of a hog or a sheep, nay in some cases for the stealing of a penny, and justice too, in *terrorem*: and now shall not some of them be hanged that have robbed us of all our propriety, and sheered at once all our sheep and all we have away, and would have made us indeed poor Belizarios to have begged for half-pennies, when they would not have left us one penny that we could have called our own?

"Let us therefore now, Mr. Speaker, not be so pitiful as that we become remiss; not so pitiful in judgment, as to have no judgment; but set the deplorable estate of Great Britain now before our eyes, and consider how our gracious sovereign hath been abused, and both his majesty and all his subjects injured by these wicked instruments; for which my humble motion is, that with these particulars we become not so merciful as to the generality, the whole kingdom, to grow merciless. *Fiat Justitia.*"

Whereupon, the Lord Keeper was the same day voted a Traitor, upon the following particulars; 1. For refusing to read the remonstrance against the Lord-Treasurer Weston, 4 Car. when the parliament desired it. 2. For soliciting, persuading, and threatening the Judges to deliver their Opinion for the levying of Ship-Money\*. 3. For several illegal ac-

tions in Forest-matters. 4. For ill offices done, in making the king dissolve the last Parliament, and causing his Declaration thereupon to be put forth.

Whereupon, it was resolved upon the Question,

"That John lord Finch, baron of Fordwich, Lord-Keeper of the Great Seal of England, shall be accused in this house, in the name of all the Commons of England, of High-Treason, and other great Misdemeanors."

Resolved, "That a Message be sent by the lord Falkland, to accuse John lord Finch, baron of Fordwich, Lord-Keeper of the Great Seal of England, in the name of this house, and all the commons of England, of High-Treason, and other great Crimes and Misdemeanors; and to desire that he may be forthwith sequestered from parliament, and be committed; and that in some convenient time this house will resort to their lordship, with particular Accusations and Articles against him.

The next morning, the 22d, the Lord-Keeper (considering with what impetuosity and violence every thing was managed) got up early, and escaped in disguise into Holland, from whence he wrote a Letter to the Lord Chamberlain, dated from the Hague, Jan. 3, 1640-1.

"My most well beloved lord; The interest your lordship hath ever had in the best of my fortunes and affections, gives me the privilege of troubling your lordship with these few lines, from one that hath nothing left to serve you withal but his prayers; these your lordship shall never fail of, with an heart as full of true affection to your lordship as ever any was. My lord, it was not the loss of my place, and with that of my fortunes, nor being exiled from my dear country and friends, though many of them were cause of sorrow, that afflicts me; but that which I most suffer under is, that displeasure of the house of commons conceived against me. I know a true heart I have ever born towards them, and your lordship can witness in part, what ways I have gone in: but silence and patience best becomes me, with which I must leave myself and my actions to the favourable constructions of my noble friends, in which number your lordship hath a prime place. I am now at the Hague, where I arrived on Thurs-

"He took up Ship-money where Mr. Noy left it, and being a Judge carried it up to that pinnacle, from whence he almost broke his own neck, having in his journey thither had too much influence on his brethren to induce them to concur in a Judgment they had all cause to repent. To which his Declaration, after he was Keeper of the Great Seal of England, must be added, upon demurrer put into a bill before him, which had no other equity in it, than an order of the lords of the council: 'That whilst he was 'Keeper, no man should be so saucy as to dispute those Orders, but that the wisdom of 'that board should be always ground enough 'for him to make a decree in Chancery.'"

\* Lord Clarendon in his History, vol. 1. p. 71 (8vo. edition) says, "Undoubtedly, my lord Finch's Speech in the Exchequer Chamber made Ship-money much more abhorred and formidable than all the Commitments by the Council-Table, and all the distresses taken by the sheriffs in England." And p. 74, he says,

day the last of the last month, where I purpose to live in a fashion agreeable to the poorness of my fortunes; for my humbling in this world, I have utterly cast off the thoughts of it, and my aim shall be to learn to number my days, that I may apply my heart to wisdom, that wisdom that shall wipe away all tears from my eyes and heart, and lead me by the hand to true happiness, which can never be taken from me. I pray God of Heaven to bless this parliament, both with a happy progress and conclusion; if my ruin may conduce but the least to it, I shall not repine at it. I truly pray for your lordship and your noble family, that God would give an increase of all worldly blessings, and in the fullness of days to receive you to his glory; if I were capable of serving any body, I would tell your lordship, that no man should be readier to make known his devotion and true gratitude to your lordship, than, your lordship's most humble, and most affectionate, poor kinsman and servant,  
J. FINCH."

January 14, 1640-1. The Committee having prepared Articles of Impeachment against the Lord-Keeper, they were presented to the house, and are as follow:

**THE ACCUSATION AND IMPEACHMENT OF JOHN LORD FINCH,\*** Baron of FORDWICH, Lord-Keeper of the Great Seal of England, by the House of Commons.

I. That the said John lord Finch, baron of Fordwich, Lord-Keeper, &c. hath traitorously and wickedly endeavoured to subvert the fundamental Laws and established Government of the realm of England, and instead thereof to introduce an arbitrary, tyrannical government against law; which he hath declared by traitorous and wicked words, counsels, opinions, judgments, practices and actions.

II. That in pursuance of those his traitorous and wicked purposes, he did in the 3d and 4th year of his majesty's reign, or one of them, being then Speaker of the Commons House of parliament, contrary to the commands of the house then assembled and sitting, deny and hinder the reading of some things which the said house of commons required to be read, for the safety of the king and kingdom, and preservation of the religion of this realm; and did forbid all the members of the house to speak, and said that if any did offer to speak, he would rise and go away, and said nothing should be done in the house; and did offer to rise and go away, and did thereby and otherwise, as much as in him lay, endeavour to subvert the ancient and undoubted rights and course of parliament.†

III. That he being of his majesty's Council

\* "Sir John Finch was a man exceedingly obnoxious to the people, upon the business of Ship-money; and not of reputation and authority enough to countenance and advance the king's service." Lord Clarendon's History, vol. 1. p. 131.

† See 2 Cobb. Parl. Hist. p. 490.

at the justice seat, held for the county of Essex, in the month of October, in the 10th year of his now majesty's reign, at Stratford Langton in the same county, being then of his majesty's council, in that service did practise by unlawful means to enlarge the Forest of that county many miles beyond the known bounds thereof, as they had been enjoyed near 300 years, contrary to the law and to the Charter of the Liberties of the Forest, and other charters and divers acts of parliament: and for effecting the same did unlawfully cause and procure undue return to be made of jurors, and great numbers of other persons who were unsworn, to be joined to them of the jury, and threatened and awed the said jurors to give a verdict for the king, and by unlawful means did surprize the county, that they might not make defence, and did use several menacing wicked speeches and actions to the jury and others, for obtaining his unjust purpose aforesaid. And after verdict obtained for the king in the month of April following (at which time the said justice-seat was called by adjournment), the said John Finch, then lord chief-justice of his majesty's court of Common-Pleas, and one of the judges assistants for them; he continued by farther unlawful and unjust practices, to maintain and confirm the said verdict, and did then and there, being assistant to the justice in Eyre, advised the refusal of the traverse offered by the county, and all their evidences, but only what they should verbally deliver; which was refused accordingly.

IV. That he about the month of November, 1635, being then lord chief justice of the Common Pleas, and having taken an oath for due administration of justice to his majesty's liege people, according to the laws and statutes of the realm, contrived an Opinion *in hæc verba*, [When the good and safety, &c. See vol. iii. p. 844], and did subscribe his name to that Opinion, and by persuasions, threats, and false suggestions, did solicit and procure sir John Bramstone, knt. then and now Lord Chief Justice of England; sir Humphrey Davenport, kt. Lord Chief Baron of his majesty's court of Exchequer; sir Richard Hutton, knt. late one of the justices of his majesty's court of Common Pleas; sir John Denham, knt. late one of the barons of his majesty's court of Exchequer; sir William Jones, knt. late one of the justices of the said court of King's-bench; sir George Croke, knt. then and now one of the Judges of the said court of King's-bench; sir Thomas Trevor, knt. then and now one of the barons of the Exchequer; sir George Vernon, knt. late one of the justices of the said court of Common Pleas; sir Robert Berkley, knt. then and now one of the justices of the said court of King's-bench; sir Francis Crawley, knt. then and now one of the justices of the said court of Common Pleas; sir Richard Weston, knt. then and now one of the barons of the said court of Exchequer; some or one of them, to subscribe, with their names, the said Opinion presently, and enjoined them severally some or one of them secrecy, upon their allegiance.

V. That he the 5th day of June, then being Lord Chief Justice of the said court of Common Pleas, subscribed an extrajudicial Opinion in answer to Questions in a Letter from his majesty, *in hæc verba*, &c. [See vol. iii. p. 844.] And that he contrived the said Questions; and procured the said Letter from his majesty: And whereas the said justice Hutton and justice Croke declared to him their Opinions to the contrary; yet he required and pressed them to subscribe, upon his promise that he would let his majesty know the truth of their Opinions, notwithstanding such subscriptions; which nevertheless he did not make known to his majesty, but delivered the same to his majesty as the Opinion of all the Judges.

VI. That he being Lord Chief Justice of the said court of Common Pleas, delivered his Opinion in the Exchequer Chamber against Mr. Hampden in the Case of Ship-money; that he the said Mr. Hampden upon the matter and substance of the case was chargeable with the money then in question; a copy of which proceedings the Commons will deliver to your lordships: and did solicit and threaten the said Judges, some or one of them, to deliver their Opinions in like manner against Mr. Hampden. And after the said baron Denham had delivered his Opinion for Mr. Hampden; the said lord Finch repaired purposely to the said baron Denham's chamber in Serjeants-inn, in Fleet-street; and after the said Mr. Baron Denham had declared and expressed his Opinion, urged him to retract the said Opinion; which he refusing, was threatened by the said lord Finch, because he refused.

VII. That he, being then Lord Chief Justice of the court of Common Pleas, declared and published in the Exchequer Chamber and Western circuit where he went Judge; that the king's right to Ship-money, as aforesaid, was so whereat a right to the crown, as an act of parliament could not take it away; and with divers malicious speeches inveighed against, and threatened all such as refused to pay Ship-money: all which Opinions contained in the 4th, 5th, and 6th Articles, are against the law of the realm, the subjects right of property, and contrary to former Resolutions in parliament, and to the Petition of Right: which said Resolutions and Petition of Right were well known to him resolved and enacted in parliament, when he was Speaker of the Commons house of parliament.

VIII. That he being Lord Chief Justice of the court of Common Pleas did take the general practice of that court to his private chamber; and that he sent warrants into all or many shires of England to several men, as to Francis Giles of the county of Devon, Robert Benson of the county of York, attorneys of that court, and to divers others, to release all persons arrested on any outlawry for about 40s. fees; whereas none by law so arrested can be bailed or released without supersedeas under seal, or reversal.

IX. That he being Lord Chief Justice of

the court of Common Pleas, upon a pretended suit begun in Michaelmas Term, in the 11th year of his majesty's reign, although there was no plaint or declaration against him, did notoriously, and contrary to all law and justice, by threats, menaces, and imprisonment, compel Thomas Laurence, an executor, to pay 19l. 12s.; and likewise caused Richard Bernard, being only overseer of the last will of that testator, to be arrested for the payment of the said money, contrary to the advice of the rest of the Judges of that court, and against the known and ordinary course of justice, and his said oath and knowledge: and denied his majesty's subjects, the common and ordinary justice of this realm, as to Mr. Limerick, and others; and for his private benefit endangered and ruined the estates of many of his majesty's subjects, contrary to his oath and knowledge.

X. That he being Lord-Keeper of the Great Seal of England, and sworn one of his majesty's privy council, did by false and malicious slanders labour to incense his majesty against Parliaments, and did frame and advise the publishing the Declaration after the dissolution of the last Parliament.

All which Treasons and Misdemeanors above-mentioned, were done and committed by the said John lord Finch, baron of Fordwich, lord-keeper of the great seal of England; and thereby he the aforesaid Finch hath traitorously, and contrary to his allegiance laboured to lay imputations and scandals upon his majesty's government, and to alienate the hearts of his majesty's liege people from his majesty, and to set a division between them, and to ruin and destroy his majesty's realm of England; for which they do impeach him the said lord Finch, baron of Fordwich, lord-keeper of the great seal of England, of High-Treason against our sovereign lord the king, his crown and dignity, of the misdemeanors above-mentioned. And the said Commons by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any other Accusation or Impeachment against the said lord Finch, and also of replying to the Answer, that the said John lord Finch shall make unto the said Articles, or to any of them; and of offering Proof of the premises, or any of their Impeachments or Accusations that shall be exhibited by them, as the case shall, according to the course of parliaments, require; do pray, that the said John lord Finch, baron of Fordwich, lord-keeper of the great seal of England, may be put to answer to all and every of the premises, and such Proceedings, Examinations, Trials, and Judgments, as may be upon every of them, had and used, as is agreeable to law and justice.

After reading these Articles, Resolved upon the question,

“That these Articles thus read and ingrossed shall be sent to the lords, in maintenance of the Commons' Charge against John lord Finch of Fordwich, late Lord-Keeper of the Great Seal of England.”

Mr. Arthur Goodwin is appointed to go up with a Message to the lords to a Conference with their lordships, by a committee of both houses, concerning Articles to be delivered in maintenance of the Commons' Accusation of John lord Finch of Fordwich, late Lord-Keeper of the Great Seal of England; and concerning the Liberty and Property of the Subject.

At the request of the lord Falkland, Mr. Hyde is appointed to be assistant unto him, for the reading of the articles to be delivered against the late Lord-Keeper.

Mr. Goodwin brought answer, That according to the Order of the house, he had delivered the Message to their lordships, and their lordships will give a meeting to-morrow morning, at nine o'clock, by a committee of the whole house, as is desired.

Accordingly, the Articles against the Lord-Keeper were presented to the lords; and after reading the same,

The Lord *Falkland* spoke as follows:

"My Lords; These Articles against my lord Finch being read, I may be bold to apply that of the Poet, '*Nil refert tales versus qua voce legantur;*' and I doubt not but your lordships must be of the same opinion, of which the house of commons appears to have been, by the choice they have made of me, that the Charge I have brought is such, as needs no assistance from the bringer, leaving not so much as the colour of a colour for any Defence, including all possible evidence, and all possible aggravation (that addition alone excepted) which he alone could make, and hath made; I mean, his Confession, included in his flight.

"Here are many and mighty crimes, crimes of supererogation, (so that High-Treason is but a part of his charge) pursuing him fervently in every several condition, (being a silent Speaker, an unjust Judge, and an unconscionable Keeper). That his life appears a perpetual warfare (by mines, and by battery, by battle, and by stratagem), against our fundamental laws, which (by his own confession) several conquests had left untouched, against the excellent constitution of this kingdom, which hath made it appear unto strangers rather an iden, than a real commonwealth, and produced the honour and happiness of this to be a wonder of every other nation; and this with such unfortunate success, that as he always intended to make our ruins a ground of his advancement, so his advancement the means of our further ruin.

"After that, contrary to the further end of his place, and the ending of that meeting in which he held his place, he had, as it were, gagged the Commonwealth, taking away (to his power) all power of speech from that body, of which he ought to have been the mouth, and which alone can perfectly represent the condition of the people, whom they only represent: which if he, had not done, in all probability, what so grave and judicious an Assembly might have offered to the consideration of so gracious and just a Prince, had occasioned the

redress of the Grievances they then suffered, and prevented those which they have since endured, according to the ancient maxim, '*Odium quos laceris.*' He pursued this offence towards the parliament, by inveighing against the Members, by scandalizing their proceedings, by trampling upon their Acts and Declarations, by usurping and devolving the right, by diminishing and abrogating the power, both of that and other parliaments, and making them (as much as in him lay) both useless and odious to his majesty; and pursued his hatred to this fountain of justice by corrupting the streams of it, the Laws; and perverting the conduits-pipes, the Judges.

"He practised the annihilating of ancient and notorious perambulations of particular Forests, the better to prepare himself to annihilate the ancient and not-rious perambulation of the whole kingdom, the metes and boundaries between the liberties of the subject and sovereign power; he endeavoured to have all tenures *durante bene placito*, to bring all law from his majesty's courts into his majesty's breast; he gave our goods to the king, our lands to the deer, our liberties to his sheriffs; so that there was no way by which we had not been oppress, and destroyed, if the power of this person had been equal with his will, or that the will of his majesty had been equal to his power.

"He not only by this means made us liable to all the effect of an invasion from without, but (by destruction of our Liberties, which included the destruction of our propriety, which included the destruction of our industry) made us liable to the terriblest of all invasions, that of want and poverty. So that if what he plotted had taken root, and he made it, as sure as his Declaration could make it, (what himself was not, parliament-proof) in this wealthy and happy kingdom, there could have been left no abundance but of grievances and discontentment, no satisfaction but amongst the guilty. It is generally observed of the plague, that the infection of others is an earnest and constant desire of all that are seized by it: and as this design resembles that disease, in the ruin, destruction, and desolation it would have wrought, so it seems no less like it in this effect: he having so laboured to make others share in that guilt, that his solicitation was not only his action, but his works, making use both of his authority, his interest, and importunity, to persuade; and in his majesty's name (whose piety is known to give that excellent prerogative to his person, that the law gives to his place, not to be able to do wrong) to threaten the rest of the Judges, to sign Opinions contrary to law, to assign Answers contrary to their Opinions, to give Judgment which they ought not to have given, and to recant Judgment when they had given it as they ought: so that whosoever considers his care of, and concernment, both in the growth and in the immorality of this project, cannot but by the same way, by which the wisest judgment found the true mother of the

child, discover him not only to have been the fosterer, but the father of this most pernicious and envious design.

"I shall not need to observe, that this was plotted and pursued by an Englishman against England, (which increaseth the crime in no less degree than parricide is beyond murder) that this was done in the greatest matter joined to the greatest bond, being against the general liberty, and public propriety, by a sworn judge (and if that salt itself, because unsavoury, the Gospel hath designed whether it must be cast) that he poisoned our very antidotes, and turned our guard into a destruction, making law the ground of illegality; that he used this law not only against us, but against itself, making it, as I may say, *felu de se*, making the pretence (for I can scarce say the appearance of it) so to contribute to the utter ruin of itself.

"I shall not need to say, that either this is (or can be) of the highest kind, and in the highest degree of Parliamentary Treason, a treason which needs not a computation of many several actions, which alone were not treason, to prove a treason all together, and by that demonstration of the intention, to make that formally treason which were materially but a misdemeanor: this is a Treason as well against the king, as against the kingdom; for whatsoever is against the whole, is undoubtedly against the head, which takes from his majesty the ground of his rule, the laws, (for if foundations be destroyed, the pinnacles are most endangered) which takes from his majesty the principal honour of his rule; the ruling over freemen, a power as much nobler than that over villeins, as that is than that over beasts; which endeavoured to take from his majesty the principal support of his rule, their hearts and affections over whom he rules; (a better and surer strength and wall to the king, than the sea is to the kingdom;) and by begetting a mutual distrust, and by that a mutual disaffection between them, to hazard the danger even of the destruction of both.

"My lords; I shall the less need to press this, because, as it were unreasonable in any case to suspect your justice, so here especially, where your interest so nearly unites you; your great share in possessions, giving you an equal concernment in propriety, the care and pains used by your noble ancestors in the founding and asserting of our common liberties rendering the just defence of them your most proper and peculiar inheritance, and both exciting to oppose and extirpate all such designs as did introduce, and would have settled an arbitrary, that is, an intolerable form of government, and have made even your lordships and your posterity but right honourable slaves.

"My lords; I will spend no more words, *luctando cum larva*, in accusing the ghost of a departed person, whom his crimes accuse more than I can do, and his absence accuseth no less than his crime. Neither will I excuse the length of what I have said, because I cannot add to an excuse, without adding to the fault,

or my own imperfections, either in the matter or manner of it; which I know must appear the greater, by being compared with that learned gentleman's great ability, who hath preceded me at this time: I will only desire, by the command, and in the behalf of the house of commons, that these proceedings against the lord Finch may be put in so speedy a way of dispatch, as in such cases the course of parliament will allow."

The same day, the Commons ordered thanks to be returned from the house to Mr. St. John, Mr. Whitlock, the lord Falkland, and Mr. Hyde, for the great service they have performed to the honour of the house, and good of the Commonwealth, in the transferring the Articles against the late Lord-Keeper.

Jan. 30. It was ordered by the lord, That such Judges as the house of commons shall desire, are to be examined in the Case of the lord Finch, by the same deputed lords as were appointed in the earl of Strafford's case: but the Judges are not to be examined upon any thing to accuse themselves.

Feb. 15. The house of lords thought fit, that a Proclamation do issue out to summon the lord Finch, late Lord-Keeper, personally to appear before the Lords in parliament; to answer an Accusation of High-Treason brought against him by the commons.

But his Lordship never thought fit to surrender himself, and the Civil War soon after breaking out, there was no further proceedings against him, and he endured eight years banishment, and Compositions amounting to about 7,000*l*. But he lived to see the horrid murder of king Charles 1, and the happy restoration of king Charles the Second.

The following curious Particulars relative to the Impeachment of Lord Keeper Finch were copied by bishop Warburton from a MS. History of the Rebellion, found in a large volume, all in lord Clarendon's hand writing, which contains the private memoirs of his own life, as well as the public history that was extracted from this volume. They form one of the many passages which lord Clarendon himself had drawn his pen through, as not to be printed as part of the History of the Rebellion, and were presented to the compiler by the late learned and excellent Dr. Balguy, who received the copy from bishop Warburton:

"IT began now to be observed, that all the public professions of a General Reformation, and Redress of all Grievances the kingdom suffered under, were contracted into a sharp and extraordinary persecution of one person (lord Strafford,) they had accused of High Treason, and within some bitter mention of the archbishop; (archbishop Laud,) that there was no thought of dismissing the two armies, which were the capital grievance and insupportable burthen to the whole nation; and that instead of questioning others, who were looked upon as the causes of greater mischief than either of those

they professed so much displeasure against, they privately laboured by all their offices to remove all prejudice towards them, at least all thoughts of prosecution for their transgressions, and so that they had blanched all sharp and odious mention of Ship-Money, because it could hardly be touched without some reflection upon the lord keeper Finch, who had acted so odious a part in it, and who, since the meeting of the great council at York, had rendered himself very gracious to them, as a man who would facilitate many things to them, and therefore fit to be preserved and protected. Whereupon the lord Falkland took notice of the business of Ship-Money, and very sharply mentioned the lord Finch as being the principal promoter of it; and that, being a sworn judge of the law, he had not only given his judgment against law, but had been the solicitor to corrupt all the other judges to concur with him in their opinion, and concluded, that no man ought to be more severely prosecuted than he. It was very sensible that the leading men were much troubled at this discourse, and desired to divert it; some of them proposing, in regard we had very much and great business upon our hands in necessary preparation, we should not embrace too much together, but suspend the debate of Ship-Money for some time, till we could be more vacant to pursue it, and so were ready to pass to some other matter. Upon which Mr. Hyde insisted upon what the lord Falkland had said, that this was a particular of a very extraordinary nature, which ought to be examined without delay, because the delay would probably make the future examination to no purpose; and therefore proposed, that immediately, whilst the house of commons was sitting, a small committee might be appointed, who, dividing themselves into the number of two and two, might visit all the judges, and ask them apart, in the name of the house, what messages the lord Finch, when he was chief justice of the court of Common Pleas, had brought to them from the king in the business of Ship-Money? and, whether he had not solicited them to give judgment for the king in that case? Which motion was so generally approved of by the house, that a committee of eight persons, whereof himself was one, was presently sent out of the house to visit the several judges, most whereof were at their chambers: and justice Croke and some other of the judges, being surprised with the questions, and pressed earnestly to make clear and categorical answers, ingenuously acknowledged that the chief justice Finch had frequently, whilst the matter was depending, earnestly solicited them to give their judgment for the king, and often used his majesty's name to them, as if he expected that compliance from them. The Committee, which had divided themselves to attend the several judges, agreed to meet at a place appointed to communicate the substance of what they had been informed of, and agreed upon the method of their report to the house, which they could not make till

the next morning, it being about ten of the clock they were sent out of the house.

"That Committee was no sooner withdrawn, (which consisted of men of more temperate spirits than the leaders were possessed with,) but without any occasion given by any debate, or coherence with any thing proposed or mentioned, an obscure person inveighed bitterly against the archbishop of Canterbury; and there having been a very angry vote passed the house two days before, upon a sudden debate upon the Canons which had been made by the Convocation after the dissolution of the last parliament (a season in which the church could not reasonably hope to do any thing that would find acceptance): upon which debate they had declared, by a vote, that those Canons were against the king's prerogative, the fundamental laws of the realm, the liberty and property of the subject, and that they contained divers other things tending to sedition, and of dangerous consequence; Mr. Grimstone took occasion, from what was said of the archbishop, to put them in mind of their vote upon the Canons, and said, that the presumption in sitting after the dissolution of the parliament, (contrary to custom, if not contrary to law,) and the framing and contriving all these canons, (which contained so much sedition,) was all to be imputed to the archbishop; that the Scots had required justice against him from his being a chief incendiary and cause of the war between the two nations; that this kingdom looked upon him as the author of all those innovations in the church which were introductive to popery, and as a joint contriver with lord Strafford to involve the nation in slavery; and therefore proposed that he might be presently accused of High-Treason, to the end that he might be sequestered from the council, and no more repair to the presence of the king (with whom he had so great credit, that the earl of Strafford himself could not do more mischief by his councils and insinuations). This motion was no sooner made but seconded and thirded, and found such a general acceptance, that, without considering that of all the envious particulars whereof the archbishop stood accused there was no one which amounted to treason, they forthwith voted that it should be so, and immediately promoted Mr. Grimstone to the Message, who presently went up to the house of peers; and being called on, he, in the name of all the Commons of England, accused the archbishop of Canterbury of high-treason and other misdemeanors, and concluded in the same style they had used in the case of the lord lieutenant of Ireland. Upon which the poor archbishop, who stoutly professed his innocence, was brought on the bar upon his knees, and thence committed to the custody of Maxwell, the gentleman usher of the black rod, (from whence the earl of Strafford had been sent a few days before to the Tower) where he remained many months before they brought in a particular Charge against him.

"Notwithstanding which brisk proceeding

against the archbishop, (when the Committee the next morning made their report of what the several judges had said concerning the lord Finch,) they were wonderfully indisposed to hear any thing against him; and though many spoke with great sharpness of him, and how fit it was to prosecute him in the same manner and by the same logic they had proceeded with against the other two, yet they required more particulars to be formally set down of his miscarriage, and made another committee to take farther examination (in which committee Mr. Hyde likewise was): and when the Report was made, within a few days, of several very high and imperious miscarriages, (besides what related to the Ship-Money,) upon a motion made by a young gentleman of the same family (who pretended to have received a letter from the lord keeper, in which he desired leave to speak in the house before they should determine anything against him); the debate was suspended for the present, and leave given him to be there (if he pleased) the next day; at which time, having likewise obtained a permission of the peers to do what he thought good for himself, he appeared at the bar of the house of commons, and said all he could for his own excuse (more in magnifying the sincerity of his religion, and how kind he had been to many preachers, whom he named, and, whom he

knew were of precious memory with the unconformable party); and concluded with a lamentable supplication for their mercy. It was about nine of the clock in the morning when he went out of the house (and when the debate could no longer be deferred what was to be done upon him); and when the sense of the house appeared very evidently, notwithstanding all that was said to the contrary by those eminent persons who promoted all other accusations with the greatest fury, that he should be accused of high treason in the same form the other two had been, they persisted still so long in the debate, and delayed the putting the question by frequent interruptions, a common artifice, till it was twelve of the clock: and till they knew the house of peers was risen (which they were likewise readily enough disposed to, to gratify the keeper); and the question was put and carried in the affirmative, (with very few negatives,) and the lord Falkland appointed to carry up the accusation to the house of peers (which they knew he could not do till the next morning;) and when he did it the next morning, it appeared that the Lord Keeper had sent the great seal the night before (to the king), and had newly withdrawn himself, and was soon after known to be in Holland."

1 Seward's Anecdotes,  
362, 8vo edit. 1804.

152. Proceedings in Parliament against Dr. JOHN COSIN, a Delinquent: \* 16 CHARLES I. A. D. 1640. [4 Rushworth, 208. 2 Cobb. Parl. Hist. 725.]

November 21, 1640.

THE house of commons ordered Dr. Cosin into custody as a Delinquent. On the Tuesday following a Mr. Norton, a divine, was called in, and examined, and to divers questions demanded of him by Mr. Speaker, answered, 'That he had a son at Cambridge, and certain fellows of Peter-house endeavoured to seduce him to Popery, pretending that Dr. Cosin would make him a fellow of Peter-house if he would come thither.' Thus much appeared upon oath, and that he was forced to send for his son away: He further said, 'He hath a copy of the Arguments that passed between them and his son. That the Questions in Peter-house chapel are maintained and

'held as they are at Rome;' and instanced several of the Questions. This was referred to the Committee for Mr. Smart's Petition.

January 19, 1640-1, Dr. Cosin was bailed on his own bond for 2,000*l.* and those of two sureties for 1,000*l.* each.

January 22. The Commons resolved, 1. 'That the several Proceedings of the High Commission Court of York and Canterbury, against Mr. Smart, and the several Fines imposed by them upon him, were illegal and unjust, and ought not to bind. 2. That the Degradation of Mr. Smart, and his deprivation from his prebends, and other ecclesiastical livings, were unjust and illegal; and that he ought to be restored to all of them, together with the mean profit. 3. That Dr. Cosin, and others the prosecutors of Mr. Smart, ought to make him satisfaction for his damages sustained. 4. That Dr. Cosin is guilty of bringing in of Superstitious Innovations into the church, tending to idolatry, and of speaking of scandalous and malicious words against his majesty's supremacy, and the religion established. 5. That Dr. Cosin is in the opinion of this house unfit and unworthy to be a governor in either of the Universities, or to continue any longer head or governor of any

\* "This term," says Hume, "was newly come into vogue and expressed a degree and species of guilt not exactly known or ascertained."

"They called whom they pleased, Delinquents; received complaints of all kinds; and committed to prison whom they pleased: which had been never done, nor attempted, before this parliament; except in some such apparent breach, as the arresting a privileged person, or the like." Clarendon.

'college, or to hold and enjoy any ecclesiastical promotions.'

Referred to the Committee for Mr. Smart, to prepare such things as may be fit to be transmitted to the lords, concerning Dr. Cosin; and likewise to consider of some fit way of reparations to be made to Mr. Smart for his damages sustained.

Feb. 28. A Complaint was made against Dr. Cosin for causing 2,000*l.* to be spent in setting up of Images, and other Innovations, in the cathedral of Durham; providing an holy consecrated knife, kept on purpose to cut the Communion-Bread.

March 15. Mr. Rouse carries up the Impeachment against Dr. Cosin to the Lords, where he spake as followeth:

My lords; I am commanded by the house of Commons, to present to your lordships a Declaration and Impeachment against Dr. Cosin, and others, upon the Complaint of Mr. Peter Smart: which Mr. Smart was a Protomartyr, or first confessor of note, in the late days of persecution. The whole matter is a tree, whereof the branches and fruit are manifest in the Articles of this Declaration; which being read, I shall with your lordships favour discover and lay open the root."

Then the Articles were read thus:

#### ARTICLES of IMPEACHMENT against DR. COSIN.

I. That he was the first man that caused the Communion-Table in the church of Durham to be removed, and set Altar-wise; in the erecting and beautifying whereof, he, being then Treasurer, expended 200*l.*

II. That he used to officiate at the West-side thereof, turning his back to the people.

III. That he used extraordinary bowing to it.

IV. That he compelled others to do it, using violence to the persons of them that refused so to do: For instance, once some omitting it, he comes out of his seat, down to the seat where they sate, being gentlewomen, called them whores and jades, and pagans, and the like unseemly words, and rent some of their cloaths.

V. That he converted divers prayers in the book of common-prayer into hymns, to be sung in the choir, and played with the organ, contrary to the ancient custom of that church.

VI. That whereas it had been formerly a custom in that church, at the end of every sermon to sing a psalm, this custom, when Dr. Cosin came thither, was abrogated, and instead thereof, they sung an anthem in the choir, there being no psalm sung either at the minister's going up into the pulpit, or at his coming down.

VII. That the first Candlemas-day at night that he had been in that church, he caused three hundred wax-candles to be set up, and lighted in the church at once, in honour of Our Lady, and placed threescore of them upon and about the altar.

VIII. That in this church, there were reliques of divers images, above which were remaining the ruins of two seraphims, with the picture of

Christ between them, erected in queen Mary's time, in the time of popery: All which, when queen Elizabeth came to the crown, were demolished by virtue of a commission by her to that intent granted; which so continued demolished from that time, till Dr. Cosin came to that church: who being treasurer, caused the same to be repaired, and most gloriously painted.

IX. That all the time that he was unmarried, he wore a cope of white sattin, never officiating in any other, it being reserved solely for him, no man except himself making use thereof, which after marriage he cast off, and never after wore.

X. That there was a knife belonging to the church, kept altogether in the vestry, being put to none but holy uses, as cutting the bread in the sacrament, and the like, Dr. Cosin refusing to cut the same with any other but that, thinking all others that were unconsecrated, polluted; but that which he putting holiness in, never termed but The Consecrated Knife.

XI. That in a Sermon preached in that church, he did deliver certain words in disgrace of the reformers of our church: For instance, the words were these: 'The reformers of this church, when they abolished the mass, took away all good order; and instead of reformation, made it a deformation.'

XII. That he seldom or never, in any of his sermons, stiled the ministers of the word and Sacraments, by any other name than priests, nor the Communion-Table by any other name than Altar.

XIII. That by his appointment there was a cope bought, the seller being a convicted Jesuit, and afterwards employed in that church, having upon it the picture of the invisible and incomprehensible Trinity.

XIV. That whereas it had been formerly a custom in that church, at five of the clock to have morning-prayers read winter and summer; this custom, when Dr. Cosin came thither, was abandoned, and instead thereof was used singing, and playing on the organs, and some few prayers read, and this was called the First Service; which being ended, the people departed out of the church, returning at nine a clock, and having then morning-prayers read unto them; and this was called Second Service. Which Innovation being misliked and complained of by Mr. Justice Hutton was reformed.

XV. That he framed a superstitious ceremony, in lighting the tapers which were placed on the altar, which for instance was this: A company of boys that belonged to the Church, came in at the choir-door, with torches in their hands lighted, bowing towards the altar at their first entrance, bowing thrice before they lighted their tapers; having done, they withdrew themselves, bowing so oft as before: not once turning their back-parts towards the altar, the organs all the time going.

XVI. That he counselled some young students of the university, to be imitators and practisers

of his superstitious ceremonies; who to ingratiate themselves in his favour, did accordingly; and being afterwards reprov'd for the same, by some of their friends, confessed that Dr. Cosin first induced them to that practice, and encouraged them therein.

XVII. That he used upon Communion-days to make the sign of the cross, with his finger, both upon the seats whereon they were to sit, and the cushions to kneel upon, using some words when he so did.

XVIII. That one Sabbath-day there was set up an unnecessary company of tapers and lights in the church; which Dr. Hunt being then dean, fearing they might give offence, being they were unnecessary, sent his man to pull them down, who did so. But Dr. Cosin being thereat aggrieved, came to the fellow, and there mis-called him in most uncivil manner, and began to beat him in the public view of the congregation, to the great disturbance of the same.

XIX. That the dean and chapter of that church, where Dr. Cosin was one, with many others, being invited to dinner in the town of Durham; Dr. Cosin then and there spake words derogating from the king's prerogative. The words were these; 'The king hath no more power over the church, than the boy that rubs my horse's heels.'

XX. That there being many canons of the said church present at that time, amongst the rest there was one took more notice of his words than the rest, and acquainted one of his fellow-canons with them when he came home: This canon being a friend to Dr. Cosin, told the doctor that such a man exclaimed of him, and charged him with words that he should speak at such a time: The doctor presently sends for him; and when he came into the house, the doctor desires him to follow him into an inner room, who did so: but as soon he came in, the doctor shuts the door, and sets both his hands upon him, calling him rogue and rascal, and many other names: Insomuch, that the man fearing he would do him mischief, cried out. Mrs. Cosin coming in, endeavour'd to appease her husband, and holding his hands, the other ran away.

XXI. That the doctor did seek many unjust ways to ensnare this man, that so he might take a just occasion to put him out of his place: but none of them taking effect, he put him out by violence, having no other reason why he did so, but because he had no good voice, when he had served the place two years before Dr. Cosin came thither: For instance of which unjust ways to ensnare this man, Dr. Cosin hired a man and a woman to pretend a desire of ma-

trimony, and to offer a sum of money to this petty-canon to contract matrimony between them in a private chamber; so thereupon to take advantage of his revenge upon him.

Which ARTICLES being read,

Mr. Rouse proceeded thus:

"My Lords; I am now to discover the root of Mr. Smart's persecution. Your lordships have heard of a great design to bring in popery; you have heard of armies of soldiers, and particularly of the popish Irish army, the burthen and complaint of the commons. But there is another army not so much spoken of; and that is, an army of priests; For since altars came in, so they delight to be called. It is a saying of Gregory the great, That when antichrist comes, 'preparatus est exercitus sacerdotum,' there is an army of priests to receive him: This is fulfilled in our time: for certainly this army of Priests doth many ways advance the design and plot of popery. A first is by the subversion of our laws and government: Our laws and popery cannot stand together; but either popery must overthrow our laws, or our laws must overthrow popery. But to overthrow our laws, they must overthrow parliaments; and to overthrow parliaments they must overthrow property; they must bring the subjects goods to be arbitrarily disposed, that so there may be no need of parliaments: This hath been done by Dr. Mainwaring \*; (whom we find wanting, yet not in the Seats, but at the bar of the lords house) and the like by Dr. Beale: And I think it was the intention of the late Canons.

"A second way, by which this Army of Priests advanceth the popish design, is the way of Treaty. This hath been acted both by writings and conference. Sancta Clara himself saith, 'doctissimi eorum quibuscum egi;' So it seems they have had conferences together: And Sancta Clara, on his part, labours to bring the Articles of our Church to popery; and some of our side strive to meet him in that way. We have a testimony, that the great arch priest himself hath said, 'it were no hard matter to make a reconciliation, if a wise man had the handling of it.' But I verily believe, that as the state of papacy stands, a far wiser man than he cannot reconcile us without the loss of our religion. For the pope being fastened to his errors, even by his chair of inerrability, he sits still unmoved, and so we cannot meet, except we come wholly to him. A man standeth in a boat tied to a rock, when he draws the rope, doth not draw the rock to the boat, but the boat to the rock. And Sancta Clara doth (in this somewhat honestly) confess it; for he saith, that he dealt in this way of treaty, not to draw the church to the protestants; but the protestants to the church.

"A third way is a way of violence; this violence they exercise partly by secular arms, and partly by priestly arms, which they call spiritual,

\* The utterance of these words had been alleged against Dr. Cosin in the year 1638; and an investigation was then had by the house of commons into the conduct of the Attorney General in not proceeding in a prosecution against Cosin for the same, and into the circumstances of a pardon granted to him upon that occasion. 2 Cobb. Parl. Hist. 438 et seq.

\* See vol. 3, p. 335.

For secular arms, we have their own confession, that the late war was *bellum episcopale*: and we have the papists confession, that it was *bellum papale*; for in their motives they say, 'That the war concerns them not only as subjects, but as catholicks;' for so they falsly call themselves; and if it be so, then *bellum episcopale* is also *bellum papale*: In the episcopal war, the papal cause is advanced for the spiritual arms. Thus they come to execution.

"When a great man is coming, his sumpters, his furniture, his provisions go before: The pope's furniture, altars and copes, pictures and images are come before; and, if we believe doctor Cosin, the very substance of the mass; a certain sign that the pope was not far off. Now these fore-runners being come, if any man resist them, fire comes out of the brambles, and devours the cedars of Lebanon; the army of the priests falls upon him with their arms of suspension, sequestration, excommunication, degradation, and deprivation. And by these arms hath Mr. Smart been oppressed and undone: He falls upon their superstitions and innovations; and they fall upon him with their arms; they beat him down, yea they pull him up by the roots, taking away all his means of maintenance and living; yet they leave him life to feel his miseries. 'Ita feriunt, ut diu se sentiat mori.' There is no cruelty to priestly cruelty: These are they that did put our Saviour to death: The calling is reverend, but the corruption of it most pernicious 'corruptio optimi pessima.' I know no reason of this change, except it be that of the Apostle, because when they 'knew God they did not worship him as God,' but made a God of the world, placing the excellency of priesthood in worldly pomp and greatness, and gave the glory of the invisible God to pictures, images, and altars, therefore God gave them up to vile affections, to be implacable, unmerciful, and without natural affection. But whatsoever is the cause of their corruption, certainly their arms have fallen heavily upon Mr. Smart; and priestly cruelty hath cast him into a long misery; from

which he could get no release by any priestly mercy.

"And now it is prayed, That as these Delinquents, by the cruel oppressions of Mr. Smart have advanced the cause of popery, so they may in such a degree of justice be punished; that in them priestly cruelty, and the very cause of popery may appear to be punished and suppressed; and that Mr. Smart, suffering for the cause of protestancy, may be so repaired, that in him pious constancy, and the very cause of protestancy, may appear to be righted and repaired."

To the above ARTICLES the Doctor put in his ANSWER upon oath, and so fully vindicated himself, during the five days the Affair was depending before the Lords, that most of them acknowledged his innocence: And Mr. Glover, one of Smart's own counsel, told him openly at the bar of the house of lords, 'That he was 'ashamed of him, and could not in conscience 'plead for him any longer.' Whereupon, the lords dismissed the Doctor upon his putting bail for his appearance: but they never sent for him again\*.

\* "John Cosin was master of Peter-house in Cambridge and Dean of Peterborough, in the reign of Charles 1, in which he enjoyed several other considerable preferments. He was accused of introducing superstitious innovations in the church of Durham, of which he was then prebendary, by Peter Smart, who had been prosecuted by him for preaching against Episcopacy. He held his deanery but a short time, as he was the first of the clergy who were sequestered from their dignities and benefices by the parliament. In 1643 he retired to Paris, where he was appointed chaplain to the Protestant part of queen Henrietta's family. He succeeded Dr. Morton in the see of Durham and while he sat in that see, expended large sums in public and private charities and benefactions. He died Jan. 15, 1671-2, in the 78th year of his age." Granger.

153. Proceedings against Dr. MATTHEW WREN,\* Bishop of ELY, on an Impeachment for High Crimes and Misdemeanors: 16 CHARLES I. A.D. 1640. [4 Rushw. Coll. 351. 2 Cobb. Parl. Hist. 682.]

ON the 19th of December 1640, a Message was sent to the house of lords by Mr.

\* Mr. Grimston, with an attempt at wit which probably had its admirers, inveighing against Manwaring, Piers, Bancroft, and Wren, called this last "the least of all those birds, but one of the most unclean ones." He was dean of the chapel to Charles the First. Clarendon calls him a man of a severe, sour nature, but very learned, and particularly versed in the old liturgies of the Greek and Latin churches.

Hampden, to let their lordships know, "That they had received Informations of a very high nature against Matthew Wren, lord bishop of Ely, for setting up Idolatry and Superstition in divers places, and exercising and acting some things of that nature in his own person; and because they hear the said bishop of Ely endeavours to make an escape out of the kingdom, he was commanded to desire their lordships to think of some such course, that he may put in security for his forth-coming; and to abide the judgment of parliament." Then the

bishop of Ely was commanded to withdraw; and the lords ordered him to give 10,000*l.* bail for his forth-coming. Hereupon the Bishop was called again, and the Lord Keeper acquainted him with the order, which he consented to, hoping to get friends to be bound with him. Then it was moved, That the bishop of Ely might be bound by recognizance of 10,000*l.* for his appearance, until he put in such security as the house should approve of; which he consenting to, did immediately before the Lord Keeper in the house acknowledge as followeth, viz., ‘ Matthew Wren, Episcopus Eliensis, recognovit se de beredomino regi decem mille libras, levare de terris et tenementis bonis et catallis suis, &c. ad usum domini regis.’ The condition was, That he should appear from day to day, until Wednesday next; against which day he is to provide sufficient bail for 10,000*l.* such as this house shall approve of, to be bound for his forthcoming, and abiding the judgment of parliament.

July 5th, 1641.

Sir Thomas Widdrington brought in to the House of Commons twenty-five Articles of Impeachment against Matthew Wren, late bishop of Norwich, now bishop of Ely; which being read, and singly voted, were ordered to be engrossed. These Articles were as follows :

**ARTICLES of IMPEACHMENT against MATTHEW WREN, D.D. late Bishop of NORWICH, and now Bishop of ELY.**

That the said Matthew Wren, being popishly and superstitiously affected, did, at his first coming to be bishop of Norwich, which was in the year 1635, endeavour by sundry ways and means to suppress the powerful and painful preaching of the word of God, did introduce divers orders and injunctions, tending to superstition and idolatry, did disturb and disquiet the orderly and settled estate of the ministers and people, and churches of that diocese, to the great prejudice of his majesty, the great grief and disquiet, and hazard of the estates, consciences, and lives of many of his majesty’s loyal subjects there, to the manifest bringing in and encreasing of prophaneness, ignorance and disobedience in the common people, as by the particulars ensuing may appear :

I. Whereas many chancels of churches, during all the time of queen Elizabeth, king James, and of his majesty that now is, had laid and been continued even and flat, without any steps ascending towards the east end of the same, and are by the Rubrick in the Book of Common Prayer, ordered to continue as they were, and so ought to have continued; he, of his own mind and will, without any lawful warrant or authority, in the year 1636, being then bishop of Norwich, ordered and enjoined, that the same should be raised towards the east-end, some two, some three, some four steps, that so the communion-table there placed altarwise, might be the better seen of the people.

II. He in the same year 1636, ordered,

That the communion-table, which is appointed by the said Rubrick, at the time of the celebration of the holy communion, to be placed in the body of the church or chancel, where divine prayers are usually read, and where the people might best hear, should be set up close under the wall at the east-end of the chancel, altarwise, and not to be removed from thence; whereby the minister, who is by the law to officiate at the north side of the table, must either stand and officiate at the north-end of the table so standing altarwise, or else after the popish and idolatrous manner, stand and officiate at the west-side of the table with his back towards the people.

III. He in the same year 1636, enjoined that there should be a rail set on the top of the new raised steps before the communion-table, so set altar-wise as aforesaid, which rail should reach from the south-side of the chancel to the north within, which the minister only should enter, as a place too holy for the people, and some of the people were punished for entering into it, as namely Daniel Whayman, and others.

IV. The more to advance blind superstition, he in the same year 1636, ordered that all the pews in the churches should be so altered, that the people might kneel with their faces eastward, towards the communion-table so set altarwise, as aforesaid; and that there should be no seats in the chancel above, or on either side, even up with the said table.

V. He in the same year 1636, enjoined that every minister, after he had finished the reading of some part of morning prayer at the desk, should go out from the same to the holy table, set altarwise, as to a more holy place, and there, when no communion was to be administered, read at the said table a part of the communion service, now commonly called the second service, whereby the consciences, both of the ministers and people, have been not only very much offended and grieved; but also the service itself was made very unprofitable to the people, who could not hear what was said, or prayed in that place.

VI. That both he in his own person, his chaplains, and others of the clergy; as namely, Mr. John Nowel, Mr. William Guest, Mr. John Dunkon, and others, following his example, did ever, after the table was so set altarwise, use and perform such, so many, and so frequent bowings, and adorations, examples, to draw others to the like superstitious gestures, as have given great scandal, and offence to the sound, sincere, and well-affected Christians.

VII. He in the said year 1636, enjoined all the people to come up to the rail to receive the holy communion, and there kneel, and do reverence before the holy table placed altarwise, and gave directions to the ministers, not to administer the communion to such people as should not so come up, and do such reverence as aforesaid; and that the minister should within the rail deliver the bread to such people only as should so come up and kneel

before the said table as aforesaid; this was an offence to the consciences of many good people, who for fear of idolatry and superstition, durst not come to kneel at the said rail before the table so placed altarwise; and many people not coming up thither, though presenting themselves upon their knees in chancel, have not had the communion delivered unto them; and afterwards for not receiving have been excommunicated; as namely, John Shyming, Samuel Dunckon, Peter Fisher, Thomas Newton, Edward Bedwell, Edmund Day, John Frowar, and many others.

VIII. He did in the same year 1636, enjoin and command that there should be no sermons on the Lord's days in the afternoon, or on the week days at all, without his license; and also enjoined that there should be no catechising; but only such questions and answers, as are contained in the Book of the Common Prayer, not allowing the ministers to expound or open the points of the same to the people; he and his under officers affirming in public places that such an exposition might be as ill as a sermon; and the more to hearten and confirm the people in prophaning the Lord's-day, he enjoined the ministers to read publicly in their churches, a book published touching sports on the Lord's-day, for not reading whereof, some ministers were by the command and directions of the said bishop, suspended, viz. Mr. William Leigh, Mr. Richard Proud, Mr. Jonathan Burr, Mr. Matthew Brownrigg, Mr. Mott, and divers others; some deprived, Mr. Powell, Mr. Richard Raymond, Mr. Jeremy Borrowes, and some otherwise troubled; by all which, knowledge was suppressed, and ignorance and prophaneness introduced in that diocese.

IX. There having been formerly two kinds of ringing of bells, and calling people to the church in that diocese, viz. one kind when there were only prayers to be read, and another kind when there were both prayers to be read, and a sermon preached, whereby the people did apply themselves to the service of God in those places, where both prayers and preaching was to be: he, to hinder the people in their good desires in serving of God, and edifying their souls, did in the same year 1636, command and enjoin, that there should be no difference in ringing of bells to church when there was a sermon and when there was none.

X. Whereas many godly ministers, for the preventing of the great sin in the people of unworthy receiving of the holy communion of the Lord's Supper, did use to preach, two or three days before every communion, a preparation sermon to prepare and instruct the people in the right and worthy receiving of the communion, he the said bishop did in the said year 1636 forbid ministers to preach any such preparation sermon in that diocese; as namely, Mr. Devereux, Mr. Swan, and other ministers.

XI. Whereas all godly ordinances are sanctified, and made fruitful by the blessing of God upon them by prayer, he endeavouring to

suppress the benefit and power of prayer in the year 1636, enjoined, that no minister should use any prayer before his sermon; but move the people to pray only in the words of the 50 canon, made anno 1603, which canon was warranted by the law, and that no prayer should be used before or after the sermon, unless he in his own person having been at the sermon in the town of Ipswich, when the preacher did use or make any other prayer, did sit upon his seat, without using or giving any reverence of kneeling, or otherwise, thereby to discountenance such prayer: and he, in the said year 1636, enjoined that no prayer should be made in the pulpit for the sick, and that such as were prayed for in the reading-desk, should be prayed for only in the two collects prescribe for the visitation of the sick in private houses.

XII. He, the more to alienate the people's hearts from hearing of sermons, in the said year 1636 commanded and enjoined all ministers to preach constantly in their hood and surplice, a thing not used before in that diocese, and much offensive to the people as a scandalous innovation; and the parishioners of Knatshall wanting a surplice, he did by his officers, in the year 1637, enjoin the churchwardens there, that no prayers should be read in that church, till they had got a surplice, which they not getting for the space of two Lord's days after, had no prayers during that time there.

XIII. That during the time of his being bishop of Norwich, which was about two years and four months, there were, for not reading the second service at the communion table set altarwise, for not reading the book of sports, for using conceived prayers before and after sermons, and for not observing some other illegal innovations by him and his under-officers, by and upon his directions and injunctions, sundry godly, painful, preaching ministers, that is to say, master William Powel, master John Carter, master Robert Peck, master William Bridges, master William Green, master Mott, master Richard Raymond, master Thomas Scot, master Greenhill, master Nicholas Beard, master Hudson, Robert Kent, Jeremy Burrows, master Thomas Allen, and others, to the number of fifty, excommunicated, suspended or deprived, and otherwise censured and silenced, to the undoing of many of them, their wives and children; and they could not be absolved without giving promise to conform to his directions, *editis et edendis*; by means whereof some ministers were enforced to depart this realm into Holland, and other parts beyond sea, viz. the said master Thomas Bridges, master Jeremy Burrows, master Thomas Allen, master John Ward; and others of Norwich, to remove into other peaceable dioceses, as namely, Mr. Edmund Calamy, Mr. Broom, Mr. Beard, and others; and some of them so prosecuted, as hath been suspected to be the cause of their deaths, as namely Mr. Thomas Scot and others; the terror of which proceedings hath caused other ministers to leave their cures, and go away, viz. Mr. William Kirington, Mr. Thomas

Warren, Mr. John Allen, and others : and if a stranger preached at the cure of such a parson suspended, the churchwardens permitting such parson so to preach, were enjoined penance, and otherwise troubled ; as namely the churchwardens of Snailwell, and the stranger for preaching, was also therefore molested, viz. Mr. Ash, Mr. Eades, Mr. Manning, and other ministers.

XIV. That during the time he was bishop of the said see of Norwich, he did unlawfully compel the inhabitants of the several parishes within that diocese, to raise the floors of the chancels of their respective churches, to rail in their communion tables, to remove the pews and seats, and to make other alterations in the respective churches ; in the doing whereof the said inhabitants were put to great, excessive, and unnecessary charges and expences, amounting in the whole, to the sum of 5,000*l.* and upwards ; which said charges and expences, he did by unlawful means and courses, enforce the said inhabitants to undergo ; and such of the said inhabitants, as did not obey the same, he did vex, trouble, and molest by presentments, citations, excommunications, tedious and frequent journeys, and by attendances at the courts of his chancellor, and other his officials, viz. the churchwardens of Linne, Ipswich, St. Edmundsbury, and others.

XV. That for not coming up to the rail to receive the holy communion, kneeling there before the table altarwise, for not standing up at the Gospel, and for not observing and performing of his unlawful innovations and injunctions, many other of his majesty's subjects, viz. Peter Fisher, Samuel Duncon, James Percival, John Armiger, Thomas King and others, have been by him, his chancellors, visitors, commissaries, and officials, by commands and injunctions, much molested, disquieted, and vexed in their estates and consciences, by citations to the courts, long attendance there, dismissal, fees, excommunications, penances, and other censures.

XVI. That by reason of the rigorous prosecutions and dealings in the last precedent Articles mentioned, and by reason of the continual superstitious bowing to, and afore the table set altarwise, the suspending, silencing, driving away of the painful preaching ministers, the suppressing and forbidding of sermons and prayers, the putting down of lectures, the suppressing means of knowledge and salvation, and introducing ignorance, superstition, and prophaneity ; many of his majesty's subjects, to the number of three thousand, many of which used trades, spinning, weaving, knitting and making of cloth, stuffs, stockings, and other manufactures of wool ; that is to say, Daniel Banning, Michael Metcalf, John Berant, Nicholas Metcalf, John Derant, Busby, Widow Mares, Richard Cock, John Dicks, Francis Laws, John Senty, and many others ; some of them setting an hundred poor people on work, have removed themselves, their families and estates, into Holland, and other parts beyond

the seas, and there set up and taught the natives there, the said manufactures, to the great hinderance of trade in this kingdom, and to the impoverishing, and bringing to extreme want ; very many who were by those parties formerly set on work, to the great prejudice of his majesty and his people.

XVII. That he the said bishop, finding the people to distaste his innovations, hath often in public and private speeches, declared in the said year 1636, that what he did in the same, was by his majesty's command ; whereby he, contrary to the duty of his place, which he held under his majesty, being dean of his majesty's royal chapel, and contrary to the duty of a good and loyal subject, endeavoured to free himself of blame, and to raise an ill opinion of his royal majesty, in the hearts of his loving subjects.

XVIII. That he the said Matthew Wren, being bishop of Norwich in the said year 1636, in the tower church in Ipswich, and other places, did in his own person use superstitious and idolatrous actions and gestures in the administration of the Lord's Supper, consecrating the bread and wine, standing at the West side of the table with his face to the East, and his back towards the people, elevating the bread and wine so high, as to be seen over his shoulders ; bowing low, either to or before them ; when he, after the elevation, had set them down on the table.

XIX. That he the more to manifest his Popish affections, in the said year 1636, caused a Crucifix, that is to say the figure of Christ upon the cross, to be engraven upon his episcopal seal, besides the arms of the see.

XX. That he hath chosen and employed such men to be his commissioners, rural deans, and to be his household chaplains, whom he knew to be, and stand affected to his innovated courses, and to Popish superstition, and to be erroneous and unsound in judgment and practice, as namely Mr. John Nowell, Mr. Edmund Mapletoft, Mr. John Dunkin, Mr. Boucke, Mr. Dun and others.

XXI. That he hath very much oppressed divers patrons of churches, by admitting, without any colour of title, his own chaplains, and others whom he affected, into livings which became void within his diocese ; unjustly enforcing the true and right patrons to long and chargeable suits to evict such incumbents, and to recover their own right ; some of which he did against his priestly word given to the said patrons, or their friends, *in verbo sacerdotis*, not to do the same ; this he did in the case of one Mr. Rivet.

XXII. That he and others, in the year 1635, sold, or granted away the profits of his primary visitation for 500*l.* over and above the charges of the visitation, and for the better benefit of the farmer, set forth a Book in the year 1636, intitled, Articles to be enquired of within the Diocese of Norwich, in the first visitation of Matthew, lord bishop of Norwich, consisting of 139 articles ; and wherein are contained the number of 897 questions, according

to all which, the churchwardens were enforced to present upon pain of perjury; and some churchwardens, that is to say, Robert Langley, Charles Newton, Richard Hart, William Bull, and Zephany Ford, and others, not making presentments accordingly, were cited, molested and troubled, and enjoined penance; notwithstanding many of the said articles were ridiculous and impossible.

XXIII. That the church-wardens, and other men sworn at the visitation, were enforced to have their presentments written by clerks, specially appointed by such as bought the said visitation, to whom they paid excessive sums of money for the same: some twenty-two shillings, as namely, Richard Hurrell, John Punchard, and others, some more, some less, for writing one presentment, to the grievous oppression of his majesty's poor subjects in that diocess.

XXIV. Whereas by the laws of this realm no tithes ought to be paid out of the rents of houses, nor is there any custom or usage in the city of Norwich for such payments; yet the said bishop endeavoured to draw the citizens, and other the inhabitants within the said city, against their wills and consents to pay 2s. in the pound, in lieu of the tithes of houses within the several parishes of the said city, unto the ministers there of the said respective parishes; and the better to effect this his unjust resolution, he did by false and undue suggestions in the 14th year of his majesty's reign that now is, procure his majesty to declare under his highness's great seal of England his royal pleasure, That if any person within the said city shall refuse to pay according to the said rate of 2s. in the pound unto the minister of any parish within the said city; that the same be heard in the court of Chancery, or in the consistory of the bishop of Norwich; and that in such case no prohibition against the said bishop of Norwich, their chancellors or commissaries in the said courts of consistory, be granted; and if any such writ be at any time obtained, the Judges so granting the same, upon sight of his highness's said order, shall forthwith grant a consultation to the minister desiring the same; which said order and decree under the great seal of England tended to the violation of the oaths of the judges, and was devised, contrived, and made by the said bishop; and afterwards by his evil counsels and false surmises he did obtain his majesty's royal consent thereunto, and by colour of the order aforesaid, and other the doings of the said bishop, the citizens and inhabitants of Norwich aforesaid, viz. John Collar, Judith Perkeford, and others, have been enforced to pay the said 2s. in the pound in lieu of tithes; or else by suits and other undue means been much molested, and put to great charges and expences, contrary to the law and justice.

XXV. That he assumed to himself an arbitrary power, to compel the respective parishioners in the said diocess, to pay great and excessive wages to parish-clerks, viz. the pa-

rishioners of Yarmouth, Congham, Tostock and others, commanded his officers, that if any parishioner did refuse to pay such wages the should certify him their names, and he would set them into the high commission court for example of the rest, and that one or two out of Ipswich might be taken for that purpose.

And the said commons by protestation saving to themselves the liberty of exhibiting at any time hereafter any other accusation or impeachment against the said Matthew Wren late bishop of Norwich, and now bishop of Ely; and also of replying to the Answer that by the said Matthew Wren shall make unto the said Articles or any of them, or of offering proof of the premises or any other impeachments or accusations that shall be exhibited by them, as the case shall, according to the course of parliaments, require, do pray that he the said Matthew Wren may be called to answer the said several crimes and misdemeanours, and receive such condign punishment as the same shall deserve, and that such further proceedings may be upon every of them had and used against him, as is agreeable to law and justice.

After reading these Articles, the Commons resolved, "That Matthew Wren, bishop of Ely, is in their opinion unfit, and unworthy to hold or continue any spiritual promotion or office in the church or common-wealth; and that the lords be desired to join with this house, to move his majesty to remove the said bishop from his person and service." Upon this,

Sir Philip Parker, knight of the shire for Suffolk, took occasion to speak as follows:—

"Mr. Speaker; I stand not up in my own particular behalf, but in the universal and general name of the whole kingdom. Alas! Mr. Speaker, they depend all upon our exemplary justice; which, if we do fully execute, will not only give great and plenary satisfaction to our nation, but will likewise cause the land to smile hereafter with the blessed beams of prosperous felicity; but if the least error or smallest deliberation be overseen by us, (Oh! it strikes my trembling mind with horror to think on it) how will all things precipitate themselves into ruin most irrevocable? But I speak not this, as if any here would omit, or extenuate, the supremacy of justice in the least thought. To admonish you of that point were to bid the moon keep her monthly course, the spheres to reduce themselves in their circumference, or the sun to shine upon the earth. But I speak this only to add a spur unto you, lest we should at any time languish in our Heaven-proceeding journey. The cries of the people have come up to me: the voice of the whole nation tingles in my ears; and, methinks, I hear each subject wish, that we would briefly establish the church-government with all expedition. Let us first begin to confirm our religion, and God will bless our other proceedings the better. That was always my opinion, and, I am sure, the expectation of the whole kingdom. How

long have we sat here, and how little have we effected? How much time have we consumed, and what little have we performed therein? How long have we laboured in this our daily travail, and as yet have brought forth but an embryo in what we did intend? It is true, I confess, we have tormented ourselves with daily troubles and vexations, and have been very solicitous for the welfare of the common-wealth; but what have we performed, what have we perfected? I will once more relate what my former opinion was, let us I say, begin in the real establishment of our religion; and as I said all our other determinations will succeed with a better omen; for indeed most of our delinquents are linked to this chain, they depend most on this point; therefore we should do well to enter speedily upon the work.

"Mr. Speaker, excuse my zeal in this case; for my mouth cannot imprison what my mind intends to let out, neither can my tongue conceal that which my heart desires to promulge. Behold the archbishop, that great incendiary of this kingdom, lies now like a fire-brand raked up in the embers; but if ever he chance to blaze again, I am afraid that what heretofore he had but in a spark, he will burn down to the ground in a full flame. Wherefore, let us begin, for the kingdom is pregnant with expectation in this point. I confess there are many more delinquents, for the judges and other knights walk in quерpo; but they are only thunderbolts forged in Canterbury's fire. I look upon them all but as polluted rivers, flowing from that corrupt fountain. Well, is it so then, that all depend on religion? Why are we then so backward in reforming the church? Why do we stick in this point, and not rather proceed in it with all expedition? For indeed according to the laws of this kingdom, as it hath the dignity of pre-eminence, so let us give it the priority in our determinations.

"Mr. Speaker, think with yourself, I pray, in what faction the church is now; in what schism; in what confusion of distracted sectaries it is promiscuously shaken; behold the Papists will have their way, the Brownists will have their way, the Anabaptists their way, the Puritans, as some call them, their way, the Jesuitical priests their way; and in these various ways, they make such a labyrinth of religion, that few or none scarce can find out the right way. It behoves us therefore, and is expedient, that we should add a period to those irregular ways, that the vulgar may no longer wander in these distracted paths.

"Mr. Speaker, I have now unloaded my mind of her weary burthen; and I beseech you digest my words, with your serious consideration, in this respect of establishing the church government, in true, sincere, perfect, and unpolluted religion; which if we do perform, and fully effect, we shall do great honour to God, get credit to ourselves, and give great satisfaction to the whole kingdom. This is my opinion; this is my expectation; this is my prayer; and lastly, this is my hope."

July 20.

The Commons sent up the aforesaid Articles of Impeachment against Matthew Wren, bishop of Ely, by sir Thomas Widdrington, member for Berwick: who, upon presenting the same, made the following Speech:

"My Lords; I am commanded by the knights, citizens, and burgesses now assembled for the commons in parliament, to deliver to your lordships these Articles against Matthew Wren, D. D. late bishop of Norwich, and now bishop of Ely; may it please your lordships to hear them read. [Here the Articles were read.]

"My Lords, these Articles are dipped in those colours in which this bishop rendered himself to the diocese of Norwich: they need no gloss nor varnish. In them you may behold the spirit and disposition of this bishop: hear the groans and cries of the people; see a shepherd scattering (I had almost said devouring) his own flock. He that was desired to paint Hercules, thought he had done enough, when he had made a resemblance of the lion's skin, which he was wont to carry about him as a trophy of his honour. I will not say, in these, you will find a resemblance of the lion's skin. I am sure you will find the resemblance of the skins, (that is to say, the tattered and ruined fortunes) of poor innocent lambs, who have extremely suffered by the violence of this bishop. In 1635, this man was created bishop of Norwich. He is no sooner there, but he marcheth furiously. In the creation of the world, light was one of the first productions. The first visible action of this bishop, after his creation into this see, was to put out many burning and shining lights; to suspend divers able, learned, and conscientious ministers. He, that should have been the golden snuffer of these lights, became the extinguisher; and, when these are taken away, where shall poor men light their candles?

"My Lords, this was not all: he puts out lights, and sets up firebrands in their places; suspends painful ministers, and set up idle, factious and superstitious priests, to use their own favourite word, in their places; yet it is the fortune of these men, at this time, like rivers in the ocean, to be buried in the extreme activity of their diocesan. He made a scourge, not of small cords, but of new injunctions and numerous articles, tied about with a strong twist of a most dangerous oath; and with this he whips, not buyers and sellers, but the faithful dispensers of the word, out of their churches, out of their estates, out of their dear country. This Noah (if I may so call him without offence) as soon as he entered into the ark of this diocese, he sends, nay, forces doves to fly out of this ark; and when they return unto him with olive branches in their mouths of peaceable and humble submission, he will not receive them into this ark again; unless, like ravens, they would feed upon the carrion of his new inventions, they must not have any footing there. He stands as a flaming sword, to keep such out of his diocese.

"My Lords, unless he had done this, he could never have hoped to have brought that great work, he undoubtedly aimed at, to any perfection. Whilst the Palladium of Troy stood, that city was impregnable. The Greeks had no sooner stolen that away, but they instantly won the city: so then he first put out the candles, then was the opportunity to shuffle in his works of darkness: he first beats off the watchmen and seers; then was likely to follow that which the impiety of some was pleased to stile, 'The piety of the times.' This being done, he then begins to dress out God's worship, according to his own fancy. This he expresseth in injunctions and directions, the Minervæ of his own brain. We find them stiled, 'Regales injunctiones domini episcopi;' a stile too sacred to baptize his brats withal: I shall be bold to call them 'Tyrrannicas injunctiones domini episcopi.'—Stories afford not a more barbarous cruelty, than to join a dead and a living body together; the one is miserably killed with the stench of the other. This bishop, who, like Aaron, should have stood between the living and dead, hath joined to lively ordinances many dead and venomous ceremonies; which have no other life than what they received from the breath of his injunctions; and these are pressed upon the consciences; even these must be observed, as moral laws. An arbitrary government in the church is more dangerous, more grievous than that in the state: this is exercised upon men's consciences, the most tender parts; and is the very pinnacle of tyranny, and of all others the most intolerable. That blow, which will hardly be felt by the arm, will put out the eye.

"My Lords, in the time of Richard 1, one of this man's predecessors, a valiant bishop, went into the Holy War: This bishop hath raised a war at home in his own diocese; a war not against Saracens, Barbarians, Turks, or Infidels, but against good and well disposed people. I know not what stile to give this war: without doubt, my lords, this was no Holy War. The weapons used in this war were 28 Injunctions, 139 Articles, containing 879 Questions. The soldiers were chancellors, commissaries, officials, commissioners, rural deans, &c. Himself commanded in chief. The ways of assault and killing were by excommunications, suspensions, deprivations.—I stop here. 'Mille modis morimur mortales.' The magazine, wherein all these were originally hatched and lodged, was the superstitious and malicious breast of this bishop. His diocese was the stage where the direful tragedies of this war were acted, by the space of two years and upwards. Thus did he trouble Israel, in the time of peace; nay, by these, he put some of the chariots and horsemen of Israel to flight; out of these he raiseth a farm of 500*l.* for his primary visitation. If it be considered, 'cuius pertinentiis,' it was not dear, yet well improved; for it was but 40*l.* in the time of some of his predecessors. Will it please your lordship, with patience, to cast your eyes upon the mo-

del of this bishop's zeal, piety, and religion let his affection to prayer and preaching speak for all the rest. First, for prayer. It was his hap to find a prayer, which I no prayer; pretended to be prescribed by a canon, which is no canon; I mean the 55*th* canon, set forth in 1603; and no other prayer must be used in his diocese before sermon.—That monster of conceived prayer (pardon the expression, it is not mine own) seemed as bad to him as a spell or charm. It must not be used upon any occasion. Without doubt he would never have been so strait laced and severe in this particular, if he had but dreamed of that strait which a minister, a friend of his, was put unto by this means: the story is short; A butcher was gored in the belly by an ox; the wound was cured; the party desired public thanksgiving in the congregation; the minister, finding no form for that purpose, read the collect for churching of women.—Next for Preaching. That he is most able in this kind is agreed on by all; but that he ever preached himself in his diocese, saving once, I never heard affirmed by any. His next care was that others should not preach too often; if they did, they must be put into his black bill. He changed that golden sentence of 'Vae mihi si non predicavero,' into 'Vae aliis si predicaverint.' He was so far from the practice of St. Paul, the great preacher of the Gentiles, who, we read, preached till midnight, that there must be no sermons in the afternoon; but there may be, nay, there must be, sports and pastimes then. And, as if he had stood in fear of the inarticulate language of bells which might foretell a sermon, he cannot endure the noise of a sermon in the toll of a bell. In a word: he adorned churches, at the charge of others; and spoiled pulpits, which ought to have been the greatest part of his own charge.

"My Lords, you have now presented to your lordships a brother, nay, one whose place engaged him to be a father of the clergy: yet one who, like Joseph's brethren, hath taken the coats from Joseph; nay they were forced to fly from him as Joseph from his mistress, or else they must taste of his forbidden waters; but, in their going away, he rent their skirts, nay their whole garments and livelihood from them. He hath taken the lock from many Samsons, and done what he could to put out their eyes, and to make them grind in the mill of his pernicious and dangerous innovations. He should, like Moses, have led his flock. Moses led the children of Israel through the Red Sea: this man drives part of his flock over the sea, but went not himself. Like Nimrod, he hath invaded the laws and liberties of the subject: he hath been as great a robber as ever was presented to your lordships: he hath robbed the king of his subjects, the greatest glory of kings; a kingdom of trade, of its tradesmen, the supporters of it. He that deprives the king of one subject, you know his punishment; and what shall be the punishment of him who hath robbed the king of so many subjects?—In the 14*th* of

Hon. S, we find a tenant in dower punished in action of waste, because she had destroyed two rich villains, and made them beggars. I appeal to your lordships what is his offence who hath committed so much wilful waste and spoil, beggared hundreds, not villains, but free-born subjects. He robbed souls of that sweet manna, which is *Pabulum Animarum*, the Word of God.

"My Lords, I have not yet recounted all his robberies: he hath robbed God of part of his day, making part of that, a day of sports: he hath robbed the subjects of their undubitable birthright, the laws of the kingdom. The citizens of Norwich must pay tythes for the rents of houses; there is no law in England, nor custom in Norwich for it: nay, and that they may be sure to be robbed of justice too, the suit for these tythes must be in his own consistory, from whence there must be no appeal, no prohibition. The true patrons of churches; they are robbed of their presentations; others, who had none or small pretence of right, are admitted upon this unhallowed maxim, That if he should institute those who had right, the pretender was without remedy. By this he inverted a fundamental law of this nation, to invest remediless rights in unjust possessors.

"My Lords, I cannot tell you all, but you can measure a lion by the paw. I am commanded to lay this great malefactor at your doors; one who hath been a great oppugner of the life and liberty of religion; and who set a brand of infamy (to use his own words) upon Ipswich edu-

cation. In sum: one who is a complete mirror of innovation, superstition, and oppression. He is now in the snare of those Articles, which were the works of his own hands. The rod of Moses, at a distance, was a serpent; it was a rod again when it was taken into his hand: This bishop was a serpent, a devouring serpent, in the diocese of Norwich; your lordships peradventure will, by handling of him, make him a rod again; or, if not, I doubt not but your lordships will chastise him with such rods as his crimes shall deserve. My lords, I am commanded by the house of commons to desire your lordships, that this bishop may be required to make Answers to these Articles; and that there may be such proceedings against him, as the course and justice of parliament doth admit."

No further proceedings upon this Impeachment appear to have taken place.\* But see the Trial of the Twelve Bishops, No. 158.

\* "Wren was of Pembroke Hall, Cambridge, and afterwards became master of Peter-House, chaplain to Charles I., prebendary of Winchester, dean of Windsor, and in 1634 was made bishop of Hereford: He was afterwards translated to Norwich, and in 1638 to Ely; during the Civil Wars his property was seized, and his person imprisoned in the Tower, where he continued 18 years without being brought to trial. At the Restoration he was reinstated in his bishoprick, and died at Ely House, London, 1667, aged 81." Lempriere.

154. Proceedings in Parliament against Sir FRANCIS WINDEBANK,\*  
knt. Secretary of State, for High Crimes and Misdemeanors:  
16 CHARLES I. A. D. 1640. [4 Rushw. Coll. 68. 2 Cobb.  
Parl. Hist. 682.]

IN the month of November 1640, the fifth and last parliament of king Charles I, met, and very soon this Parliament of Inquisition, as Saunderson calls it, began to look terrible to all

that lodged but under a suspicion of guilt; but insufferable to those whose consciences condemned themselves. Sir Francis Windebank, Secretary of State, was said to be one of the

\* "Mr. Francis Windebank (soon after knighted) was made Secretary of State by the interest of bishop Laud, who has thus entered it in his Diary, 1632, June 15. 'Mr. Francis Windebank, my old friend, was sworn secretary of state; which place I obtained for him of my gracious master king Charles.' He proved so much a creature of the Queen's, and such an advocate and patron of all suffering Priests and Jesuits, that he got the character of a Papist, and brought the greater odium upon bishop Laud, who preferred him, and who for that reason was to answer to the people for his good behaviour. That which created the more envy, was the turning out an old secretary, sir John Coke, whose age and infirmities had indeed made him unfit for business." Kennett.

"About this time," says Clarendon, "sir

Francis Windebank, one of the principal Secretaries of State, and then a member of the house of commons, was accused of many transactions on the behalf of the Papists, of several natures (whose extraordinary patron indeed he was) and he being then present in the House, several warrants under his own hand were produced for the discharge of prosecutions against priests, and for the release of priests out of prison: whereupon, whilst the matter should be debated, according to custom he was ordered to withdraw, and so went into the usual place, the committee-chamber; immediately whereupon, the house of commons went to a Conference with the lords upon some other occasion, and returning from that Conference, no more resumed the debate of the Secretary, but having considered some other business rose at their usual hour; and so the Secretary had liberty to go to his own house;

latter; who, observing a storm rising strongly against him, by some votes in the house, about the beginning of December, thought proper to withdraw himself to a place of greater safety, and fled into France.

from whence, observing the disposition of the House, and well knowing what they were able to say against him, he had no more mind to trust himself in that company, but the same night withdrew himself from any place where enquiry might be made for him, and was no more heard of till the news came of his being landed in France.

"I could never yet learn the true reason, why they suffered secretary Windebank to escape their justice (for the lord Finch, it was visible he was in their favour, and they would gladly have preserved him in the place) against whom they had more pregnant testimony of offences within the verge of the law, than against any person they have accused since this Parliament, and of some that, it may be, might have proved capital, and so their appetite of blood might have been satisfied: For, besides his frequent letters of intercession in his own name, and signification of his majesty's pleasure, on the behalf of Papists and Priests, to the Judges and to other ministers of justice; and Protections granted by himself to priests, that nobody should molest them; he harboured some priests in his own house, knowing them to be such; which, by the statute made in the 29th year of queen Elizabeth, is made felony: and there were some warrants under his own hand for the release of priests out of Newgate, who were actually attainted of treason, and condemned to be hanged, drawn, and quartered; which by the strict letter of the statute, the lawyers said, would have been very penal to him.

"I remember one story brought into the House concerning him, that administered some mirth; a messenger (I think his name was Newton) who principally attended the service of apprehending Priests, came one day to him in his garden, and told him, 'That he had brought with him a priest, a stirring and active person, whom he had apprehended that morning; and desired to know, to what prison he should carry him.' The Secretary sharply asked him, 'Whether he would never give over this blood thirsty humour?' and in great anger calling him Knave, and taking the warrant from him by which he had apprehended him, departed without giving any other direction. The Messenger appalled, thought the priest was some person in favour, and therefore took no more care of him, but suffered him to depart. The priest, freed from this fright, went securely to his lodgings, and within two or three days was arrested for debt, and carried in execution to prison. Shortly after, secretary Windebank sent for the messenger, and asked him, 'What was become of the priest he had at such a time brought before him?' He told him, 'That he conceived his

The ARTICLES against him were ready drawn up, and the Crimes he was accused of were as follows:—

"I. Seventy-four Letters of Grace to Recusants, within these four years, signed by his own hand. II. Sixty-four Priests in the Gatehouse, within these four years discharged, for the most part, by him. III. Twenty-nine discharged by his verbal order. IV. A Warrant to protect one Mufson, a condemned Priest, and all the houses he frequented: V. One committed by the king's own hand, and discharged by him, without signification of the king's plea-

'honour had been offended with the apprehension of him, and therefore he had looked no farther after him.' The Secretary in much passion told him, 'the discharging a priest was no light matter, and that if he speedily found him not, he should answer the default with his life; that the priest was a dangerous fellow, and must not escape in that fashion.' The messenger, besides his natural inclination to that exercise, terrified with those threats, left no means untried for the discovery, and at last heard where the man was in execution in prison: thither he went and demanded the priest (who was not there known to be such) as his prisoner formerly, and escaped from him; and by virtue of his first warrant took him again into his custody, and immediately carried him to the Secretary; and within few days after, the priest was discharged, and at liberty. The jailor, in whose custody he had been put for debt, was arrested by the parties grieved, and he again sued the messenger, who appealed for justice to the house of commons against the Secretary.

"This case had been presented to the Committee, and was ready to be reported, with all those warrants under his own hand before-mentioned, at the time when secretary Windebank was in the house. Besides that, he was charged by the lords, by message, or at a conference, for breach of privilege at the dissolution of the last parliament, and signing Warrants for the searching the Studies and Papers of some members; for which, according to the doctrine then received, he might have been put into the custody of the serjeant of the House. But, as the last occasion was not laid hold of, because it would have inevitably involved his brother secretary sir Harry Vane, who was under the same charge, and against whom indeed that charge was aimed: so, it seems, they were contented he should make an escape from any trial for the rest; either, because they thought his place would be sooner void by his flight than by his trial, which would have taken up some time, and required some formality, they having designed that place to Mr. Hollis; or, that they thought he would, upon any examination, draw in somewhat to the prejudice of sir Henry Vane, whom they were to protect: and so they were well content with his escape."

\* See Mr. Glyn's Report, 4 Rushworth, 68 et seq.

pure therein. VI. A Petition of St. Giles in the fields, near London, to the king, of the Increase of Popery in their parish, wherein twenty-one persons were seduced and turned by two priests, the which priests were both discharged by him."

From Calais, this unfortunate Statesman wrote the following Letter to Philip earl of Pembroke, then Lord Great Chamberlain of England :

" My Lord ; I owe myself to your lordship for your late favours, and therefore much more the account of myself; though the debt, in either respect, be of little consideration, and the caucelling of both may be of greater advantage to you than to continue the obligation.

" This account had been presented to your lordship at my first arrival here with my first dispatches, but I was so mortified with my hazardous passage in an open shallop, and so perplexed with the thoughts of miseries, into which I find myself plunged; and besides, the departure of the messenger that carried those letters, was so sudden, that it was not possible to perform this duty to your lordship sooner; for the which I do most humbly crave pardon. Your lordship may now please to accept the expressions, from the saddest and most wounded soul in the whole world, who am a spectacle of misery in myself, in my distressed wife and children, and in my whole fortunes; who have left the attending of my sovereign and master, and access to the best prince in the world; who am become a scorn and by-word to all the world, both at home and abroad; a wanderer, an exile from my own country, now in the declination of my years, and likely to end my days in a remote country, far from the comfort of all my friends.

" What I am guilty of none knows so well as his majesty, whom I have served faithfully, diligently, and with as true and loyal a heart, according to my poor abilities, as any other whatsoever; and if I found my conscience charged with any crime of baseness, corruption, infidelity, or any thing else unworthy of a gentleman, I should not venture to address these complaints to your lordship, or to any other person of honour.

" In this disconsolate estate, being an object not altogether unworthy of your Lordship's compassion, be it for no other respect, but that I have long served the king and queen's majesties, I doubt not but your lordship, in your generosity and goodness, will have a lively sense and feeling of my sufferings, and vouchsafe me such relief as in your honour you may; and if myself, who, by course of nature, cannot be now of long continuance, be not considerable, I must beseech your lordship to have pity upon my poor innocent wife and children, that they receive such comfort and assistance from you in my absence, that they may be preserved from perishing. And to that end I most humbly crave your lordship's favour to this bearer,

my son, and to give him the honour of access whensoever he shall make his addresses to you; wherein you shall do a work of singular charity.

" Now, because there is an opinion in the world, that I have much improved my fortune by the Roman party, and that there hath been a design, by my ministry, to introduce popery into England, I shall humbly crave your lordship's patience in giving me leave to clear these two great misunderstandings; which, if they were true, were sufficient to render me incapable of his majesty's favours, or of the compassion of any person of honour whatsoever.

" For the first, it is notorious to all the world, that having now served his majesty, in the place of secretary, for the space of above 8 years, I have not added one foot of land to the inheritance left me by my father; which, in land and lease, was not above 500*l*. per annum; a poor and inconsiderable estate for a secretary, and such a one as most secretaries have more than trebled in a short time: for my manner of living, it hath been much under the dignity of a secretary, and if I had not been very frugal, I could not have subsisted; where then this concealed mass of treasure is, I wish those that speak so liberally of it would let me know; for I do protest to God I am utterly to seek where to discover it; and at this present I am so unfurnished with money, that if his majesty cause me not to be supplied, I am unable to subsist in these parts, without exposing my family in England to the danger of starving; and yet neither my purpose nor inclination is to live otherwise here, than in the greatest obscurity and closeness that possibly I may. I assure your lordship that those of the Roman party that passed my hands, by his majesty's commandment, were poor distressed creatures, and far from being able to enrich me: and besides, how little I have attended my own private interest, and how freely and like a gentleman (I hope I may speak the truth without ostentation) I have done courtesies to all, I wish it should rather appear by the testimony of such as have made use of my services, than by my own. My father and I have served the crown of England near 80 years together, in which time, if a greater estate had been raised it might well have been justified, considering the great employments near the persons of queen Elizabeth, king James, and his majesty that now is, we both have had; and your lordship may believe it, for I avow it upon the faith of a Christian, that it is no more than I have above-mentioned; and whether there are not many, from less employments, have risen to be noblemen, and made their fortune accordingly, I leave the world to judge.

" For the other suspicion, of my being a favourer or advancer of Popery, I protest before Almighty God, and as I shall answer at the last dreadful day, that I know no ground for the least suspicion thereof; neither am I myself, nor is any of mine, to my knowledge, guilty of the least thought of any such purpose;

for myself, I received my baptism in the church of England, and I know nothing in the church of Rome that can win me from that church wherein I was made a Christian; I do therefore hold this church of England, not only a true and orthodox church, but the most pure and near the primitive church of any in the Christian world; and this I will be ready to seal with my blood, whensoever there shall be occasion; with this further protestation, that if I did not hold it so, I would not continue in it for any worldly consideration whatsoever\*.

"For that which hath passed my hands for favour of that party, it hath been merely ministerial, as his majesty best knows: and I must be bold to say that his majesty hath not been deceived by it, but hath received many greater advantages: besides that, if a secretary of state

\* Saunderson says, "That sir Francis Windbank having been questioned and mainly convicted for prying Jesuits and Priests, and of worse matters suspected guilty, got over into France, where he remained to his death a professed Roman Catholic;" but Whitlocke is more tender, saying only, "That it was reported he remained to his death a professed Papist."—*Life of Charles 1*, p. 333. *Memoirs*, p. 87.

should not hold intelligence with the party, is absolutely to disable him from the service of the state, and that hath been done always more or less, and so must always continue: kings and their ministers of state have ever had, and might ever have, a latitude according to time and occasion, and cannot be so tied according to strictness of law, as others are, without peril to the government; therefore, when the Roman party were practice and busy about the state, there was reason to be more strict; but now, by the wisdom of the queen and her good offices, they are better tempered, less severity hath been used; it being the prerogative of the prince to use moderation according to the accusation. Further than this I have not had to do with the Roman party, nor thus far, but in obedience to my master's commandment; which I hope shall not be censured a crime. This being my condition, I most humbly submit it to your lordship's wisdom and goodness; and seeing there is no malignity in it, nor prejudice to the state, that your lordship would vouchsafe me your favour and protection, and preserve from perishing your lordship's most humble and faithful, though much distressed servant,

"FRAN. WINDEBANK."

"Calais, Jan. 11, 1641."

155. Proceedings against Sir GEORGE RATCLIFF,\* kn. on an Impeachment for High Treason: 16 CHARLES I. A. D. 1640. [4 Rushw. Coll. 44, 90. 2 Cobb. Parl. Hist. 698.]

AFTER the accusation of the earl of Strafford, the House of Commons fell into debate concerning sir George Ratcliff; some members of the house giving information against him, That there was cause to accuse him of High Treason, and that he ought to be sent for hither to answer it before the parliament of England, though he be a member of the parliament now sitting in Ireland; but some scruples being made about sending for him, it was referred to a Committee of seven, viz. Mr. Selden, Mr. St. John, Mr. Palmer, Mr. Solicitor, Mr. Maynard, Mr. Grimston, and Mr. Chadwell, to consider of that matter and to make a Report to the house; who afterward reported, "That the Committee were of opinion, that it is better to examine this matter according to the rules and foundation of this House, than to rest upon scattered instances." They further find an Information given of High Treason against sir George Ratcliff, which if it be true, then there is no doubt but in case of High Treason, (which privilege of parliament neither here nor there

doth reach unto) sir George Ratcliff may be sent for, though a member of parliament there. —He was accordingly sent for and committed to the Gate-House.

On the 31st of December 1640, Mr. Pym, in the name of the knights, citizens, and burgesses of the House of Commons, did present Articles to the lords, in maintenance of their Accusation of High Treason against sir George Ratcliff, the Articles were read openly, *in hac verba*:

ARTICLES of the Commons, assembled in Parliament, against Sir GEORGE RATCLIFF, knight, in maintenance of their Accusation, whereby he stands charged with High Treason.

I. That he the said sir George Ratcliff hath traiterously conspired and confederated with Thomas earl of Strafford, to subvert the fundamental laws and government of the realms of England and Ireland, and to introduce an arbitrary and tyrannical government, against laws; and hath been a counsellor, actor and abettor, in that wicked and traitorous design of bringing the Irish army into England, to compel the subjects of it to submit thereunto.

II. That he hath traiterously confederated and conspired with the said earl of Strafford, and hath been an actor, counsellor, and instrument to him, in assuming and exercising regal

\* "Sir George Ratcliff was accused here of High Treason upon pretence of being a confederate with the Earl of Strafford in his Treasons; but in truth, that he might not be capable of giving any evidence on the behalf of him and thereupon sent for into this kingdom." Lord Clarendon.

power over the liberties and persons, lands and goods, of his majesty's subjects of Ireland; and hath accordingly exercised the same tyrannically, to the subversion and undoing of divers of his majesty's liege people.

III. That, for the better enabling the said Earl and himself to go on with their traitorous designs, he the said sir George Ratcliff traiterously joined and confederated with the said Earl, in taking great sums of money out of his majesty's exchequer of Ireland, and converting them to the use of the said Earl and himself, when his majesty was necessitated for his own urgent occasions; the army having been then long unpaid.

IV. That he hath traitorously confederated with the said Earl, and abused the power and authority which he held in Ireland, to the countenancing and encouraging of papists, that he might settle a mutual dependance and confidence betwixt the Earl and himself and that party, and to alienate the affections of the Irish papists from the subjects of England, and by their help to prosecute and accomplish their malicious and tyrannical designs.

V. That he hath traitorously confederated with the said earl of Strafford, in plotting and endeavouring to stir up enmity and hostility betwixt his majesty's subjects of Ireland and those of Scotland.

VI. That, the better to preserve himself and the said Earl in these and other traitorous courses, he hath laboured to subvert the rights of parliaments, and the ancient course of parliamentary proceedings.

All which offences were committed during the time that the said sir George was a counsellor of state in the kingdom of Ireland, and had taken oath for his faithful discharge of the same. By which actions, confederacies, and conspiracies, he hath traiterously, and contrary to his allegiance, endeavoured the ruin and destruction of his majesty's kingdoms; for which they do impeach him the said sir George Ratcliff of High Treason against our sovereign lord, his crown and dignity.

And the said Commons, by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any other Accusation or Impeachment against the said sir George Ratcliff, and also of replying to the Answers that he the said sir George shall make unto the said Articles, or to any of them, and of offering proof also of the premises, or any of them, or of any other Impeachment or Accusation that shall be by them exhibited, as the case shall, according to the course of parliaments, require, do pray that the said sir George may be put to answer to all and every the premises; and that such proceedings, examinations, trial, and judgment, may be upon every of them had and used, as is agreeable to law and justice.

After the reading of these Articles, Mr. Pym delivered himself to the Lords in these words:

"My Lords; By hearing this Charge, your  
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lordships may perceive what near conjunction there is between this cause and the earl of Strafford's. The materials for the most part are the same in both. The offences of the Earl, moving from a higher orb, are more comprehensive; they extend both to England and Ireland. These (except in one particular of reducing England by the Irish army) are confined within that kingdom. The Earl is charged as an author; sir George Ratcliff as an instrument and subordinate actor. The influences of superior planets are often augmented and enforced, seldom mitigated, by the concurrence of the inferior, where merit doth arise not from well-doing, but from ill. The officiousness of ministers will rather add to the malignity of their instructions, than diminish it, that so they may more fully ingratiate themselves with those upon whom they depend.

"In the crimes committed by the Earl, there appears to be more haughtiness and fierceness, being acted by his own principles: Those motions are ever strongest which are nearest the *primum mobile*. But in those of sir George Ratcliff, there seems to be more baseness and servility, having resigned and subjected himself to be acted by the corrupt will of another. The earl of Strafford hath not been bred in the study and practice of the law; and, having stronger lusts and passions to incite him, and less knowledge to restrain him, might more easily be transported from the rule.

"Sir George Ratcliff, in his natural temper and disposition more moderate, and by his education and profession better acquainted with the grounds and directions of law, was carried into his offences by an immediate concurrence of will, by a more corrupt suppression and inthralling of his own reason and judgment.

"My lords, as both these have been partners in offending, so it is the desire of the commons, they may be put under such Examination and Trial, and other proceedings of justice, as may bring them both to partake in a deserved punishment, for the safety and good of both kingdoms."

Then sir George Ratcliff was brought to the bar, and told that the house of commons had brought up Articles of High Treason against him; which being read unto him (having liberty granted him to speak,) he desired their lordships that he might have Counsel assigned him, and that they might have liberty to come to him to advise him, because he conceived there was in the Charge divers points of law to be considered, and he himself was altogether unknowing in the manner of proceedings of this house; next, he desired that he might be allowed a competent time to answer.

This being resolved of, the Lords were pleased to call sir George Ratcliff in again; and the Speaker told him the House had granted both his requests, and acquainted him with the aforesaid order; and then he withdrew.

Then their lordships thought fit to call the Keeper of the Gatehouse, and told him that sir George Ratcliff was now committed by this

house to the Gatehouse, upon an Accusation of High Treason: Therefore their Lordships would now expect from him that he should be kept in safe and sure custody, upon his peril;

and that every night he must take a note what persons have visited him that day, and every Saturday to give an account thereof to this house.—See the next Case.

156. Impeachment of Sir RICHARD BOLTON, knt. Lord Chancellor of Ireland; Dr. JOHN BRAMHALL, Lord Bishop of Derry; Sir GEORGE LOWTHER, knt. Lord Chief Justice of the Common Pleas; and Sir GEORGE RATCLIFF, knt.; before the House of Lords in Ireland: 16 CHARLES I. A. D. 1641. [4 Rushw. Coll. 214.]

THIS Impeachment was brought up to the House of Lords in Ireland March 4th, 1641, by Captain Audley Mervin, who introduced it with the following Speech:

"My lords; I am commanded by the knights, citizens and bargesses of the Commons House, to present unto you Ireland's Tragedy; the gray-headed Common Laws funeral; and the active Statutes death and obsequies. This dejected spectacle answers but the prefiguring type of Cæsar's murder, wounded to death in the Senate, and by Brutus his bosom friend. Our Cæsar's image by reflection, even the fundamental Laws and Statutes of this kingdom, the sole means by which our estates are confirmed, our liberties preserved, our lives secured, are wounded to death in the Senate, I mean in the Courts of Justice, and by Brutus too, even by those persons that have received their beings and subsistence from them: so that here enters first those inseparable twins, Treason, and Ingratitude.

"In a plain phrase, (my lords), I tender unto you Treason, High-Treason, such a Treason, that wants nothing but words to express it.—To counterfeit the king's seal, to counterfeit the king's money, it is Treason: but this dies with the individual party: to betray a fort is Treason; but it dies with a few men. To betray an army is Treason; but it dies with a limited number; which may be reinforced again by politic industry: to blow up both houses of parliament, is Treason; but succeeding ages may replant branches by a fruitful posterity: but this High-Treason, by which I do now again in the name of the House of Commons, charge and impeach sir Richard Bolton, kt. lord chancellor of Ireland, and sir Gerard Lowther, kt. lord chief justice of the common-pleas; John, lord bishop of Derry, and sir George Ratcliff, kt. in its nature so far transcends any of the former, that the rest seem to be but petty larcenies in respect of this.

"What is it to subvert the fundamental laws of this kingdom? High-Treason. What is it with a contumacious malice to trample under feet the rich legacies of our fore-fathers, purchased with sweat and expence. I mean the statute laws? High-Treason. What is it, through an innate antipathy to the public good, to incarcerate the liberty of the subject under the iron and weighty chains of an arbitrary government? High-Treason! What is it, since his majesty is

the amiable and delightful portraiture of flourishing and indulgent justice to his subjects, to represent him personated in their extrajudicial censures and judgments; but to possess (if possible) the hearts of his loyal subjects of this kingdom, that he is a bloody and devouring tyrant, and to provoke their never dying allegiance into a desperate and fatal rebellion? What is it to violate the Grants of many of his majesty's progenitors, kings and queens of England, confirmed under the broad-seal, being the public faith of this kingdom, by an extra-judicial breach, grounded upon no record? What is it to insert a surreptitious Clause, forged by some servile brain, in the preamble of our last Act of Subsidies: by which the king's most excellent majesty, and the earl of Strafford are placed in one and the same sphere, allowing them but equal influences to nourish the allegiance of this kingdom. What is this but to extol other than regal authority; and to crucify the majesty of our sovereign between the two thieves of government, Tyranny and Treason?

"My lord; having such a full and rushing gale to drive me into the depth of these occasions, I can hardly steer and confine my course within the compass of patience, since I read in the first volume of their brows, the least of these to be the certain ruin of the subject; and if proved, a most favourable prologue to usher in the Tragedy of the Actors, Counsellors and Abettors herein: What was then the first and main question? It was the subversion of the fundamental laws of this kingdom. Let then Magna Charta that lies prostrated, bemeaded and groveling in her own gore, discount her wounds, as so many pregnant and undeniable proofs. Mark the epithet 'Magna,' *Kar* ~~Exm~~, confirmed by thirty parliaments in the succession of eighteen kings, the violation of which hath several times engaged the kingdom of England in a voluntary sacrifice: a Charter which imposeth that pleasant and well becoming Oath upon all sovereignty, to vindicate and preserve the immunity thereof before the crown incircle the royal temples in this oath of so high consequence and general interest, his majesty doth in a manner levy a fine to his subjects use, for avoiding all fraudulent conveyances in the administration of justice; and this oath is transplanted unto the judges, as feoffees in trust, appointed between his majesty and the subject, and sealed by his majesty's provident

care, with that emphatical penalty, that their estates and lives shall be in the king's mercy, upon the violation of the same, either in whole or in part; Neither hath the deserved punishment for the breach of this oath, been enacted, as becometh to enforce the obedience of children.

"No, my lords, the just execution of it upon their predecessors, though in breaches not so capital, might have warned them to have strangled their ill born resolutions in the cradle, before they should more proclaim their infamy, and petition for their punishment. Witness sir Thomas Wayland his banishment, confiscation of his goods and lands, only for his mercenary justice contrary to his Oath, who was chief justice of the Common Pleas, in the time of Edward 1. Witness sir William Thorp, Chief Justice of the King's Bench in the time of Ed. 3, who was adjudged to be hanged, because he had broken the king's Oath made unto the people, wherewith he was entrusted; for so was the interpretation of the reason entered in the roll.

"Yet, my lords, though Magna Charta be so sacred for antiquity; though its confirmation be strengthened by oath, though it be the proper dictionary that expounds *meum* and *fructus*, and assigns every subject his birthright, it only survives in the Rolls, but is miserably rent and torn in the Practice. These words, '*salva contenemento*,' live in the Rolls, but they are dead in the Star-chamber. These words, '*Nullus homo liber disseisietur de libero suo tenemento nisi per iudicium parium*,' live in the Rolls, but they are dead where property and free-hold are determined by paper petitions; These words, '*Nulli vendemus, nulli differemus justitiam*,' live in the Rolls, but are dead when the suits, judgments, and executions of the subjects are wittingly or illegally retarded, suspended and avoided: Shall we desire to search the mortal wounds inflicted upon the Statute Laws? Who sees them not lying upon their death-beds, stabbed by Proclamations, their primitive and genuine tenures escheated by Acts of State, and strangled by Monopolies?

"Will you survey the Liberties of the Subject? every prison spews out illegal Attachments and Commitments; every pillory is dyed with the forced blood of the subjects, and hath ears, though not to hear, yet to witness this complaint. Do you doubt of the defacement of the amiable offices of his majesty's most transcendent, and renowned justice and grace? Let then that microcosm of letters patents, confirmed under his majesty's and his predecessors broad seal of the kingdom, being the public faith thereof, and yet unchristened by frivolous and private opinions, rise up in judgment. Let the abortive judgment of the tenure in capite, where no tenure was expressed; say, let the heretical traitorous opinions, where the tenure was expressed, yet to draw in all by markets and fairs, granted in the same patents, rise up in judgment.—What glass hath this un-

happy divided kingdom from his majesty's presence and audience to contemplate the fair and ravishing form of his royal intentions in, but in the clear and diaphanous administration of his justice? And what do these traitorous and illegal practices aim at, but in affront to his majesty, which we most tenderly resent, and discontent to his subject, to multiply, as by a magic glass, the royal dispensation of his favours, into the ugly and deformed visage of their suppression of the liberties, devastation of estates, and deprivation of the lives of his loyal subjects; so that it may be said, '*Regali capitis cervicem consul equinam jungere sic vellet variasque inducere plumas*.'

"My Lords; these ought to be considered with as serious and attentive an ear, as they were practised by mischievous experiments. Inquire of the Netherlands why their fields are grown fertile by the inundation of blood; why the pensive matrons solemnize too too frequent funerals of their husbands and issue, and they will answer, That it was for the preservation of their laws, which tyranny would have innovated. This kingdom personated in the sable habit of a widow, with dishevelled hairs, seems to petition your lordships, that since she is a mother to most of us, yet certainly a nurse unto us all, that you would take some order for a redress of her tyrannical oppressions.

"These persons impeached, resemble the opacous body of the earth, interposed to eclipse that light and vigour, which the solar aspect of majesty would communicate unto his subjects. They imitate the fish Sepia, that vomits a dark liquor out of her mouth, to cloud the waters for her securer escape. They are those to whom the keys have been committed, yet they have barred the door to them that knocked. They are those unnatural parents, that give their children stones instead of bread, and scorpions for fish. Was it to this purpose that the royal authority situated them in these eminent places, that, like beacons upon high hills, they should discover and proclaim each innovation and stratagem against the public weal; whilst they, in the mean time, employ their fires to a public incendiary, or like Ignis fatuus, seduce the easy and believing traveller into pits and unexpected mires?

"Were they sworn to seal their damnation, and not the confirmation of our liberties, estates, and lives? Shall a man be censured for perjury in that breach of his private faith, and these be justifiable in Treason, aggravated by perjury against the crown and public faith of the kingdom? No, my lords, your grave, judicious, and mature examination, and deserved punishment of these traitorous proceedings, will speak these times as glorious to posterity in their reformation, as now they are lamented in their persecution. The blood-thirsting sword of an hostile enemy by a timely union and a defensive preparation may be prevented. The thin-ribbed carcass of an universal famine may have his consumption restored by a supply from our neighbouring nations. The quick-spreading

venom of an infectious pestilence may be prevented by antidotes, and qualified by physical remedies: but this Catholic grievance, like a snake in the most verdant walks, (for such are the unblemished laws truly practised) stings us to death when we are most secure, and, like the king's evil, can only be cured, by his majesty's free and gracious permission, of our modest and gentle proceedings for his vindication, and our preservation therein included.

"Spenser and Gaveston,\* who have left their names monumentally odious, for the evil counsel they fed the king's ears with, yet did possibly advance their own friends; whilst these dart their envy and treason as from a common center, equally touching the bounds of every superficies: for as concerning the valid estates, they have illegally overthrown them; when by your lordship's industry the laws receive their vigour, they will resume their confirmation. But the estates happily in themselves legal, that they have in an extrajudicial form established, will haste as speedily to their dissolution; so, that, Judas like, they betrayed their best friends with a kiss.

"My Lords, I cannot find in any surviving chronology of times, this season, to be paralleled with all circumstances: which makes me view the records amongst the infernal spirits, to find if, matched there, I might extenuate their facts, where first they appear like the false spirit, sent into the mouth of the prophets of Achab, to speak delusions to subvert the host of God. The most vehement and traitorous encounter of Satan, is lively decyphered in the true example of Job; where first I observe the disanalogy; he overthrows not Job's Magna Charta, he disseizes him not of his inheritance, nor dispossesses him of his leases, but only disrobes him of some part of his personal estate: when he proceeds to infringe Job's liberty he doth not pillory him, nor cut off his ears, nor bore him through the tongue; he only spots him with some ulcers: Here Satan stays, when these persons, by their traitorous combinations, envy the very blood that runs unspilt in our veins; and by obtruding bloody acts, damned in the last parliament, will give Satan size-ace and the dice, at Irish, in enthralling the lives of the subjects, by their arbitrary judicature. I would not, my lords, be understood to impute unto judges an infallibility, nor in impeaching these, to traduce those, whose candour and integrity shine with a more admired lustre, than their white furs, who, like trophies of virgin-justice, stood fixed and unmoved in the rapid torrent of the times, while these like straws and chips played in the streams, until they are devolved in the ocean of their deserved ruin. No, my lords, *humanum est errare*; and the law allows writs of error, and arrests of judgment; but where there is *crassa ignorantia*, against their oaths, against the fundamental, elementary, and known laws of the kingdom; nay, my lords, where it is rather *premeditata mu-*

*litia*, where there is an emulating policy, who should raze and embezzle the records in the practick, that are for the tender preservation of our liberties, estates, and lives, seeking only to be glorious in a national destruction, as if their safety were only involved in our ruin, there I have command to pity, but not to excuse them.

"To kill a Judge, *quatenus* a Judge, is not Treason; but to kill a Judge sitting on the bench, is treason; not for that the law intends it out of any malice against the party, but for malice against the law; Where then can an intensive or an extensive malice be more express or employed against the law, than the practical dialect of these persons impeached, speaks with a known and crying accent. The Benjamites slung stones with their left hands, yet they would not miss an hair's breadth: These extrajudicial proceedings are slung with the left, I mean they are sinistrous, and imprint their black and blue marks more certain and more fatal: so that they may say, '*Quæ regio in terris nostri non plena laboris?*' Though these things be familiar unto us, yet I cannot but admire how this unproportionable body of judicature, should swell up into such a vast and ulcerous dimension. But why should I? considering this eccentric motion of the body of the law, had his birth obscure, resembling the tares that were sowed in the night-time: but here is the difference, they were sown by the enemy in the absence of the master; but these are sown by the grand masters themselves purposely, to overtop and choke the expected harvest. Innovations in law, and consequently in government, creep in like heresies in religion, slowly and slyly, pleading in the end a saucy and corrupt legitimacy, by uncontroled prescription.

"My lords, this is the first sitting; and I have only chalked out this deformed body of High Treason; I have not drawn it at length, lest it might fright you from the further view thereof.

"In conclusion, It is the humble desire of the Commons, that the parties impeached may be secured in their persons, sequestered from this house, from the Council-table, and from all places of judicature (as being *civiliiter mortui*) that they may put in their Answers to the Articles ready now to be exhibited against them, and that all such further proceedings may be secretly expedited, as may be suitable to justice and the precedents of parliaments, so his majesty may appear in his triumphant goodness and indulgence to his people, and his people may be ravished in their dutiful and cheerful obedience and loyalty to his majesty. Your lordships may live in records to posterity, as the instrumental reformers of these corrupted times, and the kingdom and commonwealth may pay an amiable sacrifice in retribution and acknowledgment of his majesty's multiplied providence for our preservation herein."

\* See vol. 1. p. 21, 23.

ARTICLES of the knights, citizens and burgeses in Parliament assembled, against Sir RICHARD BOLTON, Lord Chancellor of Ireland; JOHN Lord Bishop of DERRY; Sir GERARD LOWTHER, kt. Lord-Chief Justice of his majesty's Court of Common-Pleas; and Sir GEORGE RATCLIFF, kt. in maintenance of their Accusation, whereby they stand charged with High Treason.

I. That the said sir Richard Bolton, kt. lord chancellor of Ireland, John lord bishop of Derry, sir Gerard Lowther, kt. lord chief justice of his majesty's court of Common-Pleas, and sir George Ratcliff, kt. intending the destruction of this realm, have traiterously considered and conspired together, to subvert the fundamental laws and government of this kingdom; and in pursuance thereof they and every of them have traiterously contrived, introduced and exercised an arbitrary and tyrannical government against law, throughout this kingdom, by the countenance and assistance of Thomas Earl of Strafford, then chief governor of the kingdom.

II. That they and every of them the said sir Richard Bolton, kt. lord chancellor of Ireland, John lord bishop of Derry, sir Gerard Lowther, kt. lord chief justice of his majesty's court of Common-Pleas, and sir George Ratcliff, kt. have traiterously assumed to themselves, and every of them, regal power over the goods, persons, lands, and liberties, of his majesty's subjects of this realm; and have likewise maliciously, perfidiously, and traiterously given, declared, pronounced, and published false, unjust, and erroneous opinions and judgments, sentences and decrees, in extrajudicial manner against law; and have perpetrated, practised, and done many other traiterous and unlawful acts and things, whereby as well divers mutinies, seditions, and rebellions have been raised; as also many thousands of his majesty's liege people of this kingdom, have been ruined in their goods, lands, liberties, and lives: And many of them being of good quality and reputation, have been utterly defamed by pillory, mutilation of members, and other infamous punishments; by means whereof his majesty and the kingdom have been deprived of their service in juries and other public employments, and the general trade and traffic of this island for the most part destroyed, and his majesty highly damnified in his customs and other revenues.

III. That the said sir Richard Bolton, John lord bishop of Derry, sir Gerard Lowther, and sir George Ratcliff, and every of them, the better to preserve themselves and the earl of Strafford in these and other traiterous courses, have laboured to subvert the rights of parliaments, and the ancient course of parliamentary proceedings: All which offences were contrived, committed, perpetrated, and done at such times as the said sir Richard Bolton, sir Gerard

Lowther, and sir George Ratcliff, knights, were privy counsellors of state within this kingdom, and against their and every of their oaths of the same; and at the such times as the said sir Rich: Bolton, kt. was lord chancellor of Ireland, or chief baron of the court of Exchequer within this kingdom, and sir Gerard Lowther, kt. was lord chief justice of the said court of Common-Pleas, and against their oaths of the same, and at such time as the said lord bp. of Derry was actually bishop of Derry within this kingdom, and were done and perpetrated contrary to their and every of their allegiance, and several and respective oaths taken in that behalf.

For which, the said knights citizens, and burgeses do impeach the said sir Richard Bolton, lord chancellor of Ireland, John lord bishop of Derry, sir Gerard Lowther, kt. lord chief justice of his majesty's said court of Common-Pleas and sir George Ratcliff, kt. aforesaid, and every of them, of high treason against our sovereign lord the king, his crown and dignity.

And the said knights, citizens, and burgeses, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any other Accusation or Impeachment against the said sir Richard Bolton, lord chancellor of Ireland, John lord bishop of Derry, sir Gerard Lowther, and sir George Ratcliff aforesaid, and every of them; and also of replying to their, and every of their Answer and Answers, which they and every of them shall make to the said Articles, or any of them, and of offering proof also of the premises, or of any other impeachment or Accusation, as shall be by them exhibited, as the case shall, according to the course of parliament, require.

And the said knights, citizens, and burgeses, do pray that the said sir Richard Bolton, kt. lord chancellor of Ireland, John lord bishop of Derry, sir Gerard Lowther, kt. lord chief justice of the said court of Common-Pleas, and sir George Ratcliff, kt. and every of them, be put to answer all and every the premises; and that all such proceedings, examinations, trial, and judgment, may be upon them, and every of them, had and used, as is agreeable to law and justice."

July 31st 1646. Upon the petition of adjutant Grey and Mr. Steward against an illegal decree made by sir George Ratcliff in Ireland against them, 1500*l.* were ordered to Mr. Steward, and 400*l.* to adjutant Grey, out of sir George Ratcliff's estate. (Whitl. 222.)—He was one of 57 persons excepted from Pardon in the Parliament's Propositions, July 11th, 1646. (6 Rush. 313.) and again in 1648. (Whitl. 340, 343.)

What was the end of these Prosecutions does not appear.

157. Proceedings against JOHN GOODMAN, a Seminary Priest,\*  
condemned for High Treason; 16 CHARLES I. A. D. 1641.  
[4 Rushw. Coll. 2 Cobb. Parl. Hist. 710.]

ON Saturday, Jan. 23, 1641, the House of Commons appointed Mr. Hampden, Mr. St. John, sir John Culpeper, sir John Hotham, sir Peter Hayman, sir Walter Earle, Mr. Glyn, sir Tho. Barrington, and sir Gilbert Gerard, to prepare heads for a Conference with the Lords, concerning the Reprieval of Thomas Goodman, Priest and Jesuit, and upon such other matters as they in their judgments shall think fit.—Mr. Recorder of London was sent for, who at the bar made a Narrative of the whole passage of the Indicting, Condemning, and Reprieval of Goodman the Priest.—Mr. Glyn reports the heads of the Conference to be desired with the lords, concerning the Reprieval of Goodman, &c. Sir John Culpeper was sent up to the lords to desire a Conference by a committee of both houses presently, if it might stand with their lordships occasions, in the Painted Chamber, concerning the Reprieving of John Goodman, a Priest lately condemned of High Treason. Which Conference, it appears, was presently had: After which the Lord Privy Seal reported to the Lords, "That Mr. Glyn had acquainted them with the Commons tending to the city of London, to advance money for his majesty's service, and that of the Commonwealth; answer was returned, That there was a general discontent amongst the citizens, for the Reprieval of one Goodman, a seminary priest, lately condemned for High Treason, who had been formerly so for the same offence, and banished this kingdom. By which they found that there was a great connivance at Jesuits and Priests through the kingdom, to the great

\* By statute 23 Eliz. c. 2, s. 2, it was enacted, "That it shall not be lawfull to or for any Jesuite, Seminary Priest, or other such Priest, Deacon, or religious or ecclesiasticall person whatsoever, being borne within this realme, or any other her highnesse dominions, and heretofore since the Feast of the Nativitie of Saint John Baptist, in the first yeere of her majestie reigne, made, ordained, or professed, or hereafter to be made, ordained or professed by any authoritie or jurisdiction, derived, challenged or pretended from the see of Rome, by or of what name, title or degree soever, the same shall be called or known to come into, bee or remaine, in any part of this realme, or any other her highnesse dominions, after the end of the same fortie dayes, other then in such speciall cases, and upon such speciall occasions onely, and for such time onely as is expressed in this Acte, and if he doe that, then every such offence shall be taken and adjudged to be High Treason. And every person so offending shall for his offence be adjudged a Traytor, and shall suffer, lose and forfeite as in case of High Treason." See 31 G. 3, c. 32.

disheartening of the people in this time of parliament, when they expect a thorough reformation. The Commons, therefore, desired their lordships assistance to discover such instruments as have dared to intercede for the interruption of public justice against such offenders, &c."

The Lords thought proper to acquaint the King with this Message from the Commons: and appointed the Lord Privy Seal and the Earl Marshal to deliver it.

The same day, the King being attended at Whitehall by the two Houses, made a Speech to them, and afterwards, the Commons being withdrawn, his majesty spoke a few words to the Lords, to tell them, "That he heard of a Conference to be that afternoon, about the business of Goodman the Priest; and that, in a day or two, he would send them the Reasons for what he had done in that matter, which he hoped would satisfy them."

On Monday, the 25th, the Lords at a Conference communicated to the Commons the following Message from the King.

"That the occasion of his majesty's knowledge of the Conviction of John Goodman the Priest, lately reprieved, was upon the constant order that hath been taken for divers years, That the Recorder hath at the end of every sessions attended his majesty with the Names of the persons convicted, with an expression of their offences, to the end that his majesty might be truly informed of the nature of their crimes, and consequently, not be induced by information to reprieve such as were not fit for grace and mercy: And thereupon, That Goodman was lately condemned for being in orders of a priest merely, and was acquitted of the charge of perverting the king's people in their belief, and had never been condemned or banished before. His majesty is tender in matter of blood, in cases of this nature; in which queen Elizabeth and king James have been often merciful: but to secure his people that this man shall do no more hurt, he is willing that he be imprisoned or banished, as their lordships shall advise; and if he return into the kingdom, to be put to execution without delay; and he will take such fit course for the expulsion of other Priests and Jesuits, as he shall be counselled unto by your lordships; and he doth not intend by this particular mercy to lessen the force of the law."

On the next day, both Houses agreed on the following Remonstrance to the King, which the Lord-Keeper that same afternoon in presence of both Houses, delivered to his majesty:

"May it please your majesty: Your loyal subjects the Lords and Commons now assembled by your majesty's writ in the high court of

Parliament, humbly represent unto your gracious consideration, That Jesuits and Priests ordained by authority from the see of Rome, remaining in this realm by a statute made in the 21st year of queen Elizabeth, are declared Traitors, and to suffer as Traitors. That this law is not so rigorous as some apprehend, or would have others to believe; for that it is restrained to natural born subjects only, and doth not extend to any strangers at all. That it is enacted in the first year of king James, That all Statutes made in the time of queen Elizabeth against Priests and Jesuits, be put in execution; and for a further assurance of the due execution of these laws, the Statute of the 3rd year of king James invites men to the discovery of the offenders, by rewarding them with a considerable part of the forfeiture of the recusants estates.—So that the Statute of queen Elizabeth is not only approved, but by the judgments of several parliaments in the time of king James of happy memory, adjudged fit and necessary to be put in execution.

“That considering the estate and condition of this present time, they conceive this law to be more necessary to be put in strict execution, than at any time before; and that for divers weighty and considerable reasons, viz. for that by divers Petitions from the several parts of this kingdom, complaints are made of the great increase of Popery and Superstition, and the people call earnestly to have the laws against Recusants put in execution; seeing Priests and Jesuits swarm in great abundance in this kingdom, and appear here with such boldness and confidence, as if there were no laws against them.

“That it appears unto the House of Commons by proof, That of late years about the city of London, Priests and Jesuits have been discharged out of prison; many of them being condemned of High Treason. They are credibly informed, That at this present the pope hath a Nuncio or Agent resident in the city, and they have just cause to believe the same to be true. The Papists as publicly, and with as much confidence and impunity, resort to mass at Denmark house, and St. James's, and the ambassadors chapels, as others do to their parish churches. They conceive the not putting of these statutes in execution against Priests and Jesuits, is a principal cause of the increase of popery.

“That the putting of these Laws in execution, tendeth not only to the preservation and advancement of the true Religion established in this kingdom; but also the safety of your majesty's person, and security of the state and government, which were the principal causes of the making of the laws against Priests and Jesuits, as is manifestly declared in the preamble of the laws themselves, which are the best interpreters of the minds of the makers of them.

“And because the words being penned by the advice and wisdom of the whole state, are much more full and clear than any particular man's expression can be; they were therefore read as they are vouched, those of the 27th

year of queen Elizabeth, being thus: viz. ‘That the Priests and Jesuits come hither, not only to draw the subjects from their true obedience to the queen, but also to stir up sedition, rebellion, and open hostility within the realm, to the great endangering of the safety of her royal person, to the utter ruin, desolation, and overthrow of the whole kingdom, if not timely prevented.’ And the tenour of the words of the statute of the 3rd year of king James, are in this manner: viz. ‘Whereas divers Jesuits and Priests do withdraw many of his majesty's subjects, from the true service of Almighty God, and the religion established within this realm, to the Romish religion, and from their loyal obedience to his majesty; and have of late secretly persuaded divers recusants, and papists, and encouraged and emboldened them to commit most damnable treasons, tending to the overthrow of the whole state and commonwealth, if God of his goodness and mercy had not within few hours of the intended time of the execution thereof, revealed and disclosed the same.’

“The Houses do further inform, That some Jesuits and Priests had been executed in the time of queen Elizabeth, and king James of happy memory; and when any of them have received mercy, it was in such time, and upon such circumstances, as that the same might be extended unto them without danger. Whereas now of late, there hath been a great apprehension of endeavours by some ill agents to subvert religion; and at this present both kingdoms have a general expectation of a thorough reformation. And there is already found so ill consequence of the late reprieve of John Goodman the priest, That the House of Commons having sent to the citizens of London for their assistance in the advancement of money, for the present and necessary supply of his majesty's army, and the relief of the Northern counties; upon this occasion they have absolutely denied to furnish the same: And how far the like discontents may be diffused into other parts of the kingdom, to the interruption of the levying the subsidies, the houses leave to your majesty's consideration. It is found that Goodman the priest hath been twice formerly committed and discharged; that his residence now about London, was in absolute contempt of your majesty's proclamation, as the houses are credibly informed; that he hath been sometimes a minister in the church of England, and consequently is an apostate; and both houses are very sensible, that no person should presume to intercede with your majesty in a case of so high a nature. They humbly desire, That a speedy course may be taken for the due execution of the laws against the Priests and Jesuits: that all mischiefs before mentioned may be timely remedied by your majesty's great wisdom. And lastly, That Goodman the Priest be left to the justice of the law.”

On February 3, the King spoke to the two Houses as follows:

“My lords and gentlemen; Having taken into

my serious consideration, the late Remonstrance of the houses of parliament, I give you this Answer. That I take in good part your care of the true Religion established in this kingdom, from which I will never depart: As also your tenderness of my safety, and the security of this state and government. It is against my mind that Popery or superstition should any way increase within this kingdom, and will restrain the same by causing the laws to be put in execution.

"I am resolved to provide against the Jesuits and Papists, by setting forth a Proclamation with all speed, commanding them to depart the kingdom within one month; of which if they fail, or shall return, then they shall be proceeded against according to the laws.

"Concerning Ro-etti," [One said to be the Pope's Nuntio,] "I give you to understand; That the Queen hath always assured me, That to her knowledge he hath no commission, but only to retain a personal correspondence between her and the Pope, in things requisite for the exercise of her Religion, which is warranted to her by the Articles of Marriage; which gave her a full liberty of conscience: yet I have persuaded her, that since the misunderstanding of the person's condition gives offence, she will in a convenient time remove him.—Moreover I will take a special care to restrain my subjects from resorting to mass at Denmark house, St. James's, and the chapels of ambassadors.

"Lastly, Concerning John Goodman the priest, I will let you know the reason why I reprieved him, and it is, That, as I am informed, neither queen Elizabeth, nor my father did ever avow, That any priest in their times was executed merely for religion, which to me seems to be this particular; yet seeing I am prest by both houses to give way to his execution, because I will avoid the inconveniency of giving so great a discontent to my people, as I

conceive this mercy may produce; therefore I do remit this particular cause to both the houses, but I desire them to take into their consideration the inconveniencies, as I conceive may upon this occasion fall upon my subjects and other Protestants abroad, especially since it may seem to other states to be a severity. Which having thus represented, I think myself discharged from all ill consequence that may ensue upon the execution of this person."

The next day, his majesty likewise caused a Petition of this Goodman, to be communicated to the House of Lords by the Lord Keeper, which Petition was in these words:

"To the King's Most Excellent Majesty, the Humble Petition of John Goodman, condemned.

"Humbly Sheweth; That whereas your Petitioner hath been informed of a great discontent in many of your majesty's subjects, at the gracious mercy your majesty was freely pleased to shew unto your petitioner, by the suspending the Execution of the Sentence of Death pronounced against your petitioner for being a Romish priest.—These are humbly to beseech your majesty, rather to remit your Petitioner to their mercy that are discontented, than to let him live the subject of so great discontent in your people against your majesty; for it hath pleased God to give me the grace, to desire with the prophet, That if this storm be raised for my sake, I may be cast into the sea, that others may avoid the tempest.—This is, most sacred sovereign, the Petition of him, that should esteem his blood well shed, to cement the breach between your majesty and your subjects upon this occasion. Ita testor.

JOHN GOODMAN."

Whether this Priest was executed or not, does not appear.

158. Proceedings against the TWELVE BISHOPS; namely, Dr. JOHN WILLIAMS Archbishop of York, Dr. THOMAS MORETON Bishop of Durham, Dr. ROBERT WRIGHT Bishop of Coventry and Litchfield, Dr. JOSEPH HALL Bishop of Norwich, Dr. JOHN OWEN Bishop of St. Asaph, Dr. ROBERT SKINNER Bishop of Oxford, Dr. WILLIAM PIERS Bishop of Bath and Wells, Dr. GEORGE COKE Bishop of Hereford, Dr. MATTHEW WREN Bishop of Ely, Dr. GODFREY GOODMAN Bishop of GLOCESTER, Dr. JOHN WARNER Bishop of Peterborough, and Dr. MORGAN OWEN Bishop of Llandaff, upon an Accusation of High Treason: 17 CHARLES I. A. D. 1641. [4 Rushw. Coll. 466. 2 Cobb. Parl. Hist. 993.]

ON the 30th of December, 1641, the Lord Keeper signified to the House of Lords. That the king had commanded him to deliver a Pe-

tition to their lordships, which had been presented to him. The said Petition was ordered to be read, and was in these words:

To the KING's Most Excellent Majesty, and the LORDS and PEERS now assembled in Parliament.

The Humble PETITION and PROTESTATION \* of all the Bishops and Prelates, now called by his Majesty's Writs to attend in Parliament, and present about London and Westminster for that purpose.

"That whereas the Petitioners are called up by several and respective Writs, and under

\* "Lord Clarendon, having previously given the history of the Archbishop's suggestion and preparation of this Protestation, proceeds :

"It was great pity, that though the Archbishop's passion transported him, as it usually did; and his authority imposed upon the rest, who had no affection to his person, or reverence for his wisdom; his majesty did not take a little time to consider of it, before he put it out of his power to alter it, by putting it out of his hands. For it might easily have been discerned by those who were well acquainted with the humour, as well as the temper of both houses, that some advantage, and ill use would have been made of some expressions contained in it; and that it could produce no good effect. But the same motive and apprehension that had precipitated the Bishops to so hasty a resolution (which was, that the house of peers would have made that use of the Bishops being kept from the house, that they would in that time have passed the bill itself for taking away their votes) had its effects likewise with the king; who had the same imagination, and therefore would lose no time in the transmission of it to the house. Whereas it is more probable the lords would never have made use of that very season, whilst the tumults still continued, for the passing an act of that importance; and the scandal, if not invalidity of it, would have been an unanswerable ground for the king to have refused his royal assent to it.

"As soon as this Protestation, which, no doubt, in the time before the house was to meet, had been communicated to those who were prepared to speak upon it, was delivered by the Lord Keeper with his majesty's command, and read; the governing lords manifested a great satisfaction in it; Some of them saying, 'that there was *digitus Dei* to bring that to pass, ' which they could not otherwise have compassed;' and without ever declaring any judgment or opinion of their own upon it, which they ought to have done, the matter only having relation to themselves, and concerning their own members; they sent to desire a Conference presently with the House of Commons, upon a business of importance; and at the Conference, only read, and delivered the Protestation of the Bishops to them: which, the Lord Keeper told them, he had received from the king's own hand with a command to present it to the house of peers. The house of commons took very little time to consider of the matter: but, within half an hour, they sent

great penalties, to attend in Parliament; and have a clear and indubitable right to vote in bills, and other matters whatsoever debatable in parliament, by the antient customs, laws, and statutes of this realm; and ought to be protected by your majesty, quietly to attend and prosecute that great service.

"They humbly remonstrate and protest before God, your majesty, and the noble lords and peers now assembled in parliament, that, as they have an indubitable right to sit and

up to the lords; and, without further examination, accused them all who had subscribed the Protestation, of High Treason: and, by this means, they were all, the whole twelve of them, committed to prison; and remained in the Tower till the Bill for the putting them out of the house, was passed, which was not till many months after.

"When the passion, rage, and fury of this time shall be forgotten, and posterity shall find, amongst the Records of the Supreme Court of judicature, so many Orders and Resolutions in vindication of the Liberty of the Subject against the imprisoning of any man, though by the king himself, without assigning such a crime as the law hath determined to be worthy of imprisonment: and in the same year, by this high court, shall find Twelve Bishops, members of this court, committed to prison for High Treason, for the presenting this Protestation; men will surely wonder at the spirit of that Reformation: and even that Clause of declaring all acts null, which had been, or should be done in their absence, in defence of which no man then durst open his mouth, will be thought good law, and good logic; not that the presence of the Bishops in that time was so essential that no act should pass without them; which had given them a voice, upon the matter, as negative as the king's; and themselves, in their instrument, disclaimed the least pretence to such a qualification; but because a violence offered to the freedom of any one member, is a violation to all the rest: as if a council consist of three-score, and the door to that council be kept by armed men, and all such, whose opinions are not liked, kept out by force; no doubt the freedom of those within is infringed, and all their acts as void and null, as if they were locked in, and kept without meat till they altered their judgments.

"And therefore you shall find in the Journals of the most sober parliaments, that, upon any eminent breach of their privileges, as always upon the commitment of any member for any thing said or done in the house, sometimes upon less occasion, that house, which apprehended the trespass, would sit mute, without debating, or handling any business, and then adjourn; and this hath been practised many days together, till they had redress or reparation. And their reason was, because their body was lame; and what was befallen one member, threatened the rest; and the consequence of one act might extend itself to many

vote in the House of Lords, so are they (if they may be protected from force and violence) most ready and willing to perform their duties accordingly; and that they do abominate all actions or opinions tending to Popery, and the maintenance thereof; as also all propension and inclination to any malignant party, or any other side or party whatsoever, to the which their own reasons and consciences shall not move them to adhere.

other; which were not in view; and this made their privileges of so tender and nice a temper, that they were not to be touched, or in the least degree trenching upon; and therefore that in so apparent an act of violence, where it is not more clear that they were committed to prison, than that they durst not then sit in the house, and when it was lawful in the house of peers for every dissenter in the most trivial debate, to enter his protestation against that sense he liked not, though he were single in his opinion; That it should not be lawful for those, who could not enter it themselves, to present this Protestation to the king to whom they were accountable under a penalty for their absence; and unlawful to that degree, that it should render them culpable of High-Treason; and so forfeit their honour, their lives, their fortunes, expose their names to perpetual infamy, and their wives and children to penury, and want of bread; will be looked upon as a determination of that injustice, impiety, and horror, as could not be believed without those deep marks, and prints of confusion that followed, and attended that resolution."

"And yet the indiscretion of those Bishops, swayed by the pride, and passion of that Archbishop, in applying that remedy at a time, when they saw all forms and rules of judgment impetuously declined; and the power of their adversaries so great, that the laws themselves submitted to their oppression; that they should, in such a storm, when the best pilot was at his prayers, and the card and compass lost, without the advice of one mariner, put themselves in such a cock-boat, and to be severed from the good ship, gave that scandal and offence to all those who passionately desired to preserve their function, that they had no compassion, or regard of their persons, or what became of them; inasmuch as in the whole debate in the house of commons, there was only one gentleman, who spoke in their behalfs, and said; 'he did not believe they were guilty of high treason, but that they were stark mad; and therefore desired they might be sent to Bedlam.'"

Bishop Kennett, however, (3 Complete Hist. 115,) alleges something in excuse for this Protestation. "Some hard reflections," says he, "are made upon this act of the Bishops in vindication of their parliamentary rights, in the late 'History of the Rebellion.' But whatever passion there might be in archbishop Williams the penner of it, and however improper to purge themselves of inclination to any malignant party, and however indiscreet to make the king personally concerned in the conveyance of it to the lords, and however conscious

"But whereas they have been, at several times, violently menaced, affronted, and assaulted, by multitudes of people, in their coming to perform their service in that hon. house; and lately chased away and put in danger of their lives; and can find no redress or protection, upon sundry complaints made to both houses, in these particulars\*. They likewise humbly protest, before your majesty and the noble house of peers, that, saving unto them-

they themselves might be; that at this juncture of violence it could have no good effect; yet it was certainly their duty in honour and conscience, to make some such public Protestation of their lawful rights; especially when their lordships had already too much suffered in their reputation by silence and absence, and a voluntary recess from voting in the lord Strafford's bill."

Mr. Laing, in his History of Scotland, after noticing that king Charles's approbation of the Protestation of the Bishops has been ascribed to haste and surprise, observes, that "the Protestation was, however, the same in effect with that, which the Scottish Prelates had formerly prepared and presented by the King's orders; and as both were directed against the authority of the Assembly or Parliament, from which the prelates were excluded, so the one was calculated to insinuate a secret, and the other to establish a public nullity and produce a dissolution."

\* "By this, and other means," says lord Clarendon, "all obstacles of the law being removed, and the people taught a way to assemble lawfully together, in how tumultuous a manner soever, and the Christmas holidays giving more leave and licence to all kind of people, the concourse grew more numerous about Westminster; the rabble sometimes, in their passage between the city and Westminster, making a stand before White-hall, and crying out, 'No bishops, no bishops, no popish lords,' would say aloud, 'That they would have no more porters lodge, but would speak with the king when they pleased;' and when they came near the two houses, took papers out of their pockets, and getting upon some place higher than the rest, would read the names of several persons, under the title of 'Disaffected members of the house of commons;' and called many lords, 'False, evil, and rotten-hearted lords.' But their rage and fury against the Bishops grew so high, that they threatened to pull down their lodgings where they lay; offered to force the doors of the Abbey at Westminster, which were kept locked many days, and defended by a continual guard within; and assaulted the persons of some of the Bishops in their coaches; and laid hands on the Archbishop of York, in that manner, that, if he had not been seasonably rescued, it was believed they would have murdered him: So that all the Bishops, and many other members, of both houses, withdrew themselves from attending in the houses, out of a real apprehension of endangering their lives."

selves all the rights and interests of sitting and voting in that house, at other times, they dare not sit or vote in the house of peers, until your majesty shall further secure them from all affronts, indignities and dangers, in the premises.

"Lastly, Whereas their fears are not built upon phantasies and conceits, but upon such grounds and objects as may well terrify men of good resolutions and much constancy, they do, in all duty and humility, protest, before your majesty, and the peers of that most hon. house of parliament, against all laws, orders, votes, resolutions, and determinations, as, in themselves, null, and of none effect; which, in their absence, since the 27th of this instant Dec. 1641, have already passed; as likewise against all such as shall hereafter pass in that most hon. house, during the time of this their forced and violent absence from the said most hon. house: not denying, but, if their absenting of themselves were wilful and voluntary, that most noble house might proceed in all these premises; their absence, or this their Protestation, notwithstanding: and humbly beseeching your most excellent majesty, to command the clerk of the house of peers to enter this their Petition and Protestation amongst his records, they will ever pray God to bless and preserve, &c.

Jo. Eborac.,	Guil. Bath & Welles.,
Tho. Duresme,	Geo. Hereff.,
Rob. Co. Liche,	Math. Elien.,
Jos. Norwic.,	Godfrey Gloucest.,
Jo. Asaphen.,	Jo. Petriburg.,
Ro. Oxon,	Morg. Llandaff.

Copia vera Jo. Browne, Cler. Parl."

This Petition being read, the Lords sent a Message to the Commons, to desire a present Conference by a committee of both houses, touching matters of dangerous consequence. A Conference being held immediately, the Lord Keeper, in the name of the house of peers, declared, "That this Petition and Protestation of the Twelve Bishops, containing matters of high and dangerous consequence, and such as the Lords are very sensible of, and such as require a speedy and sudden resolution, it extending to the deep intrenching upon the fundamental privileges and being of parliaments; therefore the lords have thought fit, that this matter concerning the whole parliament, may be communicated to the commons, it being a thing of so great, and so general a concernment."

The Bishops' Petition being thus communicated to the House of Commons, they came to a Resolution, to accuse those Twelve Bishops of High Treason, for endeavouring to subvert the Fundamental Laws and being of Parliaments.

And Mr. Glynn was ordered to go to the Lords, and, at their bar, in the name of the House of Commons and all the commons of England, to accuse these Twelve Prelates of High Treason, for endeavouring to subvert the Fundamental Laws of the realm and the very

being of Parliaments, manifested by preferring that Petition and Protestation; and to desire the Lords, that they may be forthwith sequestered from Parliament and put into safe custody; and that their lordships would appoint a speedy day for the Commons to charge them, and for them to answer; for that the Commons were ready to make good their Charge.

Hereupon it was ordered, "That the Gentleman Usher bring the said Bishops, so accused, before this house, that they may be committed to safe custody." In the mean time, a Conference having been desired by the Commons, concerning the Safety of the Kingdom and both houses of parliament, the Lords went to the Conference; and, being returned, the Lord Keeper reported it to the house to this effect:

He first repeated the former Message from the Commons, with their Reasons for desiring a Guard, to which the Commons said they had yet no Answer. They now desired their lordships to take the following Reasons into consideration, as an addition to their former;

"1. The insolent and traitorous Petition and Protestation of the Bishops preferred this day to their lordships; which the Commons conceive they durst not to have done without some back to their design. 2. They desire to have a Guard, because they hear the King hath a guard at Whitehall, as apprehending it fit; and the Commons conceive, that those that are enemies to the King, are likewise enemies to the Parliament; and so *vice versa*: Therefore that house desired their lordships to consider of these things, and give them an Answer, Whether they will join with the Commons in a Petition to the King or not."

Upon this, another debate arose in the Lords, Whether that house would recede, upon these further Reasons, from the Vote given last night: and this question being put, it again passed in the negative. Afterwards, both the Vote of last night and this, were ordered to be sent down to the Commons, as an Answer to them about a Guard.

The Lords being informed, that the Bishops accused of High Treason, were at the door, they were severally called in; and, first,

The Archbishop of York\*, being brought to the bar, and kneeling there as a delinquent, was commanded to stand up, when the Lord Keeper told him, "That the House of Commons, in their name, and in the name of all the commons of England, had accused him and other Bishops with High Treason, for endeavouring to subvert the fundamental laws of this realm, and the being of parliament, by preferring their Petition and Protestation, this day, to that house." The said Archbishop, at his request, having leave to speak, said, "He would

\* Concerning this Archbishop of York, see the first Note in vol. 2, p. 1163, and the bishop of Lincoln's Case, vol. 3, p. 770, of this Collection.

not, at that time, make any demurrer to the Charge, as having never heard it before; but he desired their lordships would give him leave to do as he should be advised, when he came to his Answer; and so he withdrew.

The Bishop of *Durham* was next brought to the bar in the same manner, who said, "That this was the greatest misery that ever befel him, and what he did, was not with any malicious or treasonable intent; but he, going by chance, to the Archbishop of York's house, about two days ago, he found some Bishops there, and the Petition signed by many of them; and, being desired to subscribe the said Petition, he read it over, and took some exceptions to it; but he was drawn in by inducements, or rather seducements, and he did subscribe only to preserve his right of voting in parliament;" and, desiring their lordships to have pity upon him, being a man of great years, he withdrew.

The Bishop of *Norwich* said, "This was the heaviest affliction ever came to him; and professed it was far from his thoughts to be guilty of an offence of so high a nature, and confessed he subscribed the Petition and Protestation; but desired the rest of his brethren, the Bishops, that it might be very well considered before it was presented; but whether it was so he knew not \*."

\* The following Account is given by this Bishop, in a piece of his, intitled "Hard Measure," wherein, after reciting the tumults about the house of lords, and the resolution of the Bishops to forbear any longer attendance on that account, he proceeds thus: "The Archbishop of York sent for us to his lodging at Westminster; lays before us the perilous condition we were in; advices, for remedy, (except we meant utterly to abandon our right, and to desert our station in parliament) to petition both his majesty and the parliament, That, since we were legally called by his majesty's writ to give our attendance in parliament, we might be secured in the performance of our duty and service, against those dangers that threatened us; and, withal, to protest, against any such acts as should be made during the time of our forced absence, for which he assured us there were many precedents in former parliaments, and which if we did not, we should betray the trust committed to us by his majesty, and shamefully betray and abdicate the due right both of ourselves and successors. To this purpose, in our presence, he drew up the said Petition and Protestation, avowing it to be legal, just, and agreeable to all former proceedings, and, being fair written, sent it to our several lodgings for our hands, which we accordingly subscribed, intending yet to have had some further consultation concerning the delivering and whole carriage of it: but ere we could suppose it to be in any hand but his own, the first news we heard was, that there were messengers addressed to fetch

The Bishop of *Coventry and Litchfield* said, "He subscribed the Petition, but craved their lordships best construction of it, for he did it not with any traiterous intention, and submitted himself to the pleasure of the house."

us in to the parliament upon an accusation of High Treason. For whereas this paper was to have been delivered, first to his majesty's secretary, and, after perusal, by him to his majesty, and after from his majesty to the parliament, and for that purpose to the Lord Keeper, the lord Littleton, who was the Speaker of the house of peers: all these professed not to have perused it at all; but the said Lord Keeper, willing enough to take this advantage of ingratiating himself with the house of commons and the faction, to which he knew himself sufficiently obnoxious, finding what use might be made of it by prejudicate minds, reads the same openly in the house of lords; and, when he found some of the faction apprehensive enough of misconstruction, aggravate the matter as highly offensive, and of dangerous consequence; and thereupon, not without much heat and vehemence, and with an ill preface, it is sent down to the house of commons; where it was entertained heinously, Glynn, with a full mouth, crying it up for no less than an High Treason, and some comparing, yea preferring, it to the Powder Plot."

How apt the Commons were for seizing any advantage offered to them against the Bishops, these Prelates must have known, for on the 30th July preceding they had ordered, "That a Committee shall prepare an Impeachment against the Bishops, the makers of the New Canons and Oath, upon the Votes that have passed both houses concerning these Canons and Oath; and that no Popish lords ought to have vote in the house of lords in matters of religion." And on the 3d of August, the Commons received a Report from their Committee appointed to prepare an Impeachment against the Bishops concerned in making the New Canons, by serjeant Wyld, one of the knights of the shire for Worcestershire; and, next day, the said gentleman was sent with it to the Lords. Upon delivering the said Impeachment at the bar, he spoke as follows: "My lords; The knights, citizens, and burgesses of the Commons house of parliament being sensible of the great infelicities and troubles which the commonwealth hath sustained by the exorbitant courses of the Bishops; and knowing well what the wise man saith, 'Because sentence against an evil work is not executed speedily, therefore the heart of the sons of men is fully set in them to do evil,' (the timely redress whereof doth better become the wisdom of a parliament than a too late woful repentance) have commanded me to represent unto your lordships, That Walter, bp. of Winchester, Robert, bp. of Coventry and Litchfield, Godfrey, bp. of Gloucester, Joseph, bp. of Exeter, John, bp. of St. Asaph, William, bp. of Bath and Wells, George, bp. of Here-

The Bishop of *St. Asaph* confessed "He subscribed the Petition; but he did it for matter of form, because the rest of the Bishops his brethren had done so: that thoughts of Treason were far from his heart, and desired their lordships favour and compassion towards him."

The Bishop of *Bath and Wells* acknowledged, "That he set his hand to the said Petition, without any ill intent, and desired of his brethren that it might be well considered before it was delivered; and that all the bishops had set their hands thereto."

The Bishop of *Hereford* said, "That when time was fitting he would make his humble Answer to the Charge; but desired to say nothing for the present."

The Bishop of *Ely* desired their lordships to excuse him now from speaking, lest he should do himself more hurt by that than by silence.

ford, Matthew, bp. of Ely, William, bp. of Bangor, Robert, bp. of Bristol, John, bp. of Rochester, John, bp. of Peterborough, Morgan, bp. of Landaff, together with William, abp. of Canterbury, and others of the Clergy of that province, at a Convocation, or Synod for the same province, begun at London, in the year 1640, did contrive, make, and promulge several Constitutions and Canons Ecclesiastical, containing in them divers matters contrary to the king's prerogative, to the fundamental laws and statutes of the realm, to the rights of parliament, to the property and liberty of the subjects, and matters tending to sedition and of dangerous consequence. And, to add more weight and efficacy to this their monstrous designs, they did, at the same synod, under a specious and fair title, grant a Benevolence, or Contribution, to his majesty, to be paid by the Clergy of that province, contrary to law. It rested not there; for though this had been enough to have affrighted and terrified the king's people with strange apprehensions and fears; yet, that these might not seem to be contrivances of the brain or fancy only, they were put in execution, and were executed upon divers with animosity and rigour, to the great oppression of the clergy of this realm and other his majesty's subjects, and in contempt of the king and of the law. Whether those persons, my Lords, that are culpable of these offences, shall be thought fit to have an interest in the legislative power, your lordships wisdom and justice is able to judge. But, for these matters and things, the knights, citizens, and burgesses of the Commons House in parliament, in the name of themselves and of all the commons of England, do impeach the said Bishops before-named, of the Crimes and Misdemeanors before expressed; and do therefore pray, That they may be forthwith put to their Answers in the presence of the Commons, and that such further proceedings may be had against them, as to law and justice shall appertain." See 2 Cobb. Parl. Hist. 893, 895, and 918 et seq. 936, 4 Rush. 359.

The Bishop of *Oron* owned, "He signed also; but his offence was through ignorance; and therein craved their lordships compassion."

The Bishop of *Gloucester* said, "That it did appear he was one of the last that subscribed; that it was not done with any traitorous intent, but through ignorance, and submitted himself humbly to the wisdom of the house."

The Bishop of *Peterborough* made the same confession as the former.

The Bishop of *Landaff* said, "That it was done through ignorance, and indiscretion, and that he had no design to overthrow the fundamental laws of the land; he desired he might not feel the weight of their lordships justice, but mercy, and that he might be bailed upon good security."

After hearing all these Arraignments, the Lords ordered ten of the Bishops to be committed prisoners to the Tower; but the bishops of Durham and of Coventry and Litchfield were remitted to the custody of the Black Rod.\*

The Bishop of Winchester (Dr. Walter Curle) being all this time in the House, it was moved, That it should be put to him to answer, Whether he consents to or disclaims the said Petition, before he be allowed to sit and vote in the house. The said Bishop answered, "That he never knew any thing of the matter:" hereupon the Lords gave him leave to read the Petition; after which he said, "He never read it before, and he did now utterly disclaim it." With which Answer the house was satisfied.

January 17, 1641-2.

A Committee of the House of Commons being present, the twelve bishops were severally brought in, to the house of lords. First, the Archbishop of York was brought to the bar; and, after he had kneeled as a delinquent, he was commanded to stand up; and then the Speaker, by direction of the house, told him, "That this day being appointed for the Twelve Bishops to put in their several Answers to the Impeachment of High Treason brought up from the house of commons against them, their lordships to require him to put in his Answer thereunto."

His grace answered, "That he had received an Order, dated the 30th of December last, with an Impeachment against himself and eleven other Bishops, of High-Treason, from the House of Commons; and likewise he had received divers Orders of several days that were appointed, for them to put in their Answers; and the last order for this day, which accordingly he is come to obey their lordships command; and for his own Answer to the aforesaid Impeachment of High-Treason, gave this Answer, in this manner: viz.

\* Bishop Hall says, "These two had this favour by reason of their great age; which though desired by a noble lord on his behalf, would not be yielded."

‘ I John Archbishop of York, saving to myself all Advantages of Exceptions to the insufficiency of the said Impeachment, for myself say, That I am not Guilty of the Treason charged by the said Impeachment, in manner and form as the same is therein charged.’

Then he desired a present and speedy Trial, and so withdrew. In the same manner, the rest of the Bishops were brought to the bar, and gave the same Answer.

These Twelve Bishops having given in their several Answers as aforesaid, the Committees of the House of Commons went to their own house.

Then a Petition of the Twelve Bishops was read in *hac verba* :

“ To the Right Honourable the Lords assembled in the House of Peers.

“ The humble Petition of John Archbishop of York, and other the Bishops impeached by the House of Commons of High Treason, the 30th of December last.

“ Humbly sheweth; That your Petitioners, by your honourable Order of the date of the Impeachment, were to put in their Answers thereunto the 7th of this instant, and have had sithence several days for that purpose assigned them, and are now the 11th of this instant brought hither by your lordships order.—They always having been, as now they are, ready to obey your lordships command, and many of them being already much impaired both in their healths and estates; Do humbly pray, that a speedy proceeding may be had therein; and that, in the mean time, they may be admitted to bail.

“ And the Petitioners shall ever pray for all increase of honours and divine blessings upon your lordships. Jo. Eborac, Godfrey Gloucester, Jos. Norwic, Tho. Duresme, Joh. Asaph, Guil. Bath and Wells, Geo. Hereford, Ma. Elie, Ro. Oxon, Jo. Petir. burgs, Mor. Landaffe, Rob. Co. and Lich.’

Hereupon it was ordered, That the Trial of the Twelve Bishops, shall be on the 25th instant: in the mean time the bishop of Durham and the bishop of Coventry and Litchfield shall be remanded to the custody of the Black Rod, and the rest be presently remanded to the Tower.

Feb. 15th, having been appointed for the Trial of the Bishops, a Message came up from the Commons, That in regard of the many great and important occasions, now depending before them, they desire the Trial might be put off till Friday come se’nnight, and that they would then desire no further time. The Lords agreed to this; but ordered, “ That, in regard the Bishops had been so many times put off, from day to day, from trial, and that many of them were aged men, they should be bailed; provided they found such security as the house should approve of, for their appearance on the said day, which was to be peremptory on all sides.”

Feb. 16. A Message was brought from the Commons by Mr. Hollis, importing, “ That they understood their Lordships had bailed the Twelve Bishops impeached by them of High Treason; but that they had voted they ought not to be bailed; and therefore desired their lordships to remand them back to the place where they were;” which the Lords also ordered accordingly: but sent to let the Commons know, that they had ordered the Trial to be on the 19th instant; which was agreed to by the Commons.

February 19.

This being the day, last appointed, for the Trial of the Twelve Bishops, they were brought to the bar of the House of Lords, where the Managers for the Commons attended. The Lord-Keeper told those gentlemen they might now proceed against them; whereupon Mr. Glynn desired the Impeachment might be read; which being done, the Answer, or Plea, of the Bishops was also read; importing, That they were not guilty of the Treason charged against them.

Then the Petition of the Bishops was read, on which the said Impeachment was grounded; after which Mr. Glynn proceeded to open the Charge; and first desired, That the Bishops might be asked, “ Whether they did subscribe the Petition now read, and whether it was their hand-writing?” To this question the Bishops refused to Answer, because they alleged, “ That it was not charged in the impeachment; neither were they bound to accuse themselves.” Another question was then put to them, “ Whether they consented not to the exhibiting and preferring of the Petition?” To this they said, “ That they would stand to their former answer of Not Guilty.” Then Mr. Glynn, desired, That the Bishops Answer which they made voluntarily, in this house, on the 30th December last, might be read out of the Journal Book; which being done, all the Bishops, except the archbishop of York, voluntarily confessed, That they subscribed the said Petition, and did own the hand-writing; but denied that they consented to the preferring of it.

The Committee of the Commons then proceeded, and desired leave to examine some Witnesses to prove the falsity of the Bishops Petition, in styling it, “ The Petition of all the Bishops and Prelates, now called by his majesty’s writ to attend in Parliament, and present about London and Westminster.” Likewise to prove that several Bishops did never give their consents to the said Petition, or ever absented themselves from Parliament, on any occasion, or reason of fear or menace; and that some of the petitioners, viz. the Bishops of Gloucester and Bath and Wells, sat in the house of lords the 28th of December last.

To prove this the Bishop of Salisbury was sworn, who said, “ That he was present about London and Westminster, at the time when the other bishops presented their Petition to the king and parliament: That he was not

absent from parliament on any other occasion, than his attendance on the Prince, and not out of any force or menace: neither did he hear or know of that Petition, before it was brought into the house of peers, or ever consented to it before it was preferred, or since."

Next the Bishop of *Winchester*, upon oath, deposed, "That, ever since the last recess, he hath been resident in and about London and Westminster, and attending the Parliament; that he was sent for to come to the archbishop of York the day after the great tumult, at the dean of Westminster's house, where were several other Bishops present; the said archbishop then said, That they had been affronted, and shewed a draught of a Petition, and read it to them. Some speaking of Amendments to it, the archbishop said, "It was hastily done, and might be made better," or words to that effect: That then the Archbishop left them, and, it being late, he went home himself. Afterwards he heard no more of this matter, until he, being in the Parliament House, saw a Petition there under the Twelve Bishops hands; and thinks that it was, in effect, agreeable with the aforesaid draught, although, he said, there have been some alterations made therein. He further said, That he never gave any consent to the delivery of the said Petition to the king or to the lords in parliament. Also, that on the 29th of December last, he, being coming to the parliament by water, met the earl of Newburgh, between the landing place at the Parliament-stairs and the Parliament-house; who asked him, Whither he was going, and told him there were none of his brethren, the Bishops, in the house; and thereupon he turned back. He likewise said, that either on that day, or some other about that time, he was coming in a boat towards the shore, to land at the Parliament-stairs; and seeing a company of 'Prentices, and others standing on the shore, crying, 'No Bishops!' some called out to him, and advised him not to land there; and thereupon he caused the boat where he was to turn off, and to carry him to Lambeth, where he sent for his coach to carry him home. He further said, that he never absented himself from parliament, at any other times, except upon private occasions."

Then the Bishop of *London* was sworn, who said, "He had been resident in and about London, ever since the last recess of this parliament: that, being at the latter place the day the Twelve Bishops were committed to the Tower, he was told of it, and the reason of their commitments: That the next day he came to the house of lords, where he saw the Petition which the said Bishops had presented; but did never hear of it before: that the only reason he came not to parliament, was because of the frost. Lastly, that he never did consent to the delivery of the said Petition to his majesty, nor to the lords in parliament."

The Evidence for the Matter of Fact being given, Mr. Glynn desired, That the Bishops

would make their several Answers to their Charge, if they had any thing to say.

Hereupon every Bishop for himself made his Answer for the matter of fact; the effect whereof was: "That, by reason of the great concourse of people, and their menaces, they were afraid to come to the Parliament, which was the cause of preferring the aforesaid Petition and Protestation, to preserve their Rights in Parliament, without any intention to commit any treasonable act, or destroy the fundamental laws and being of parliaments, as is charged in the impeachment against them."

After this, Mr. *Glyn* replied, and made some observations of the words of the Protestation in the Petition; and observed the circumstances of the body of the Petition, which he pressed by way of aggravation:

"It is said, in their Petition, that they can find no redress or protection upon sundry complaints made to both houses; and they do protest against all votes, laws, orders, resolutions, and determinations, as in themselves null and of none effect, which, in their absence since the 27th Dec. last, have already passed, as likewise against all such as shall hereafter pass in this house, during the time of their absence from this house. 1. Which words are an express denial of the king's authority in giving the royal assent in parliament, because the Bishops were not present. 2. Their crime tends to the subversion and undermining the foundation and power of Parliaments; it deprives this house of all being, and makes it a body without life or motion, and to be less than a Piepowder Court, unless the Bishops were present. 3. It overthrows the fundamental laws of the kingdom; for, by the taking away the foundation, being, and power of Parliaments, it takes away the fundamental laws which uphold the kingdom. 4. It is a high derogation of the honour and privileges of parliament, charging both houses of parliament with denial to give them redress, upon complaints to them made, of the particulars in the Petition; whereas in truth no such complaint was ever made to the houses of parliament. 5. That the Bishops, in the Petition, endeavour to make sedition, and to fix an impression in the hearts of the people that the parliament at that time had no power to act or proceed in any businesses, to relieve them in their grievances, without the Bishops being present. 6. That, when the Bishops Petition and Protestation was preferred, there was a great rebellion in the kingdom of Ireland; and the remedy to subdue that kingdom to obedience was Aids and Supplies, as the wisdom and power of parliament should provide, which was well known to the said bishops; therefore the Petition and Protestation of the bishops was a direct act to endeavour the loss of that kingdom. 7. That, at the same time when this Petition and Protestation was preferred, there was depending in this house a bill to take away bishops sitting and voting in parliament. 8. Their evil intentions will be discovered: 1. By the many falsities in their Petition and Protestation, which

have been disproved by witnesses. 2. By the time when this Petition and Protestation was preferred, it being the next day but one after a vote had passed in this house, That this parliament is a free parliament; therefore it was an endeavour to make an assault upon that vote, and to annul it. These, Mr. Glyn said, were the streams that flow from this fountain.

The Matter of Fact being ended; the Bishops desired that they might be heard, by their counsel, concerning the Matter of Law in point of Treason. Hereupon the lords, taking the same into consideration, ordered, That the Trial of the Twelve Bishops shall be further proceeded in on the 24th instant.

#### Feb. 24.

This being the day for the further proceedings against the Twelve Bishops, the Lords sent down word to the Commons, That they had appointed that afternoon, to hear their counsel, in point of Law, concerning the Treason alledged against them. Soon after the Commons returned for Answer, That they had resolved to proceed against the said Bishops who were impeached by them for High Treason, by Bill; and are proceeding in it accordingly. Hereupon, the Bishops were called in, and told this matter; on which they said, They had lain long under a charge of Treason, and have had many days assigned them to be heard; and since the matter of Fact had been heard, they desired the justice of this House, that they might be heard by their Counsel in point of Law; and either be acquitted, or judgment given against them upon the Charge.

The Bishops being ordered to withdraw, the Lords took their Desires into consideration, and it was ordered, "That, before the matter against the Twelve Bishops shall be concluded in any proceeding in that House, they shall be heard by themselves and their counsel, as their cause shall require."

The Bishops were called in again and told of this Order, which was all the satisfaction they had at that time. The Committee of the Commons, appointed to manage the Evidence against the Bishops, had been ordered to draw a bill, "For the forfeiting of the Issues and Profits of their Estates, temporal and ecclesiastical, and the disposing thereof as the Parliament shall think fit: for the Imprisonment of their persons during their lives; and for the disposal of all livings that may fall within their gift."

#### March 4.

The Bill against the Twelve Bishops being now depending in the House of Commons, an Order was made, That they should be heard by themselves, or by petition, at the bar of that house, this day. The bishops of Durham, and Litchfield and Coventry, appeared there; and spoke in their own defence.

The Speech of the Bishop of *Litchfield and Coventry* \* was published at that time, and is

still preserved in our Collections; which we give here as follows:

"Mr. Speaker; As it hath been ever in fashion, and in truth it is my disposition, to endeavour, at the least, to give satisfaction to every man, even to the meanest, that hath any sinister conceptions of me, be it *Scandalum datum*, or *acceptum*; so hath it been my ambition, and I have sought it with affection; and to all men, so much more to this honourable assembly, especially concerning the late Petition and Protestation exhibited unto his sacred majesty, and the lords and peers in parliament. But, in the first place, Mr. Speaker, I am, as it becomes me, to give most hearty and condign thanks to the noble knights, citizens, and burgesses, of this honourable House of Commons for that they have been pleased, by a general Vote, and I hope unanimous, to give me leave to speak for myself; and to lay open the truth of my cause, concerning the said Petition and Protestation before them.

"And now, Mr. Speaker, to address myself to the business; whereof I shall not speak as a lawyer, for I have no head for law; neither shall I need to touch upon any point thereof, as a flourishing orator desirous to hear himself speak: I have long since laid aside my books of rhetoric; my desire is, Mr. Speaker, to tread in the steps of an old Divine, of whom Sozomen writes in his Ecclesiastical History: who, groaning under the like heavy burden and accusation as I do, chose rather to vent his own sense, and express the truth of his cause in plain language, than to colour or cloak falsehood; or to extenuate his offence, by forced, trapped, and new varnished eloquence: And to that purpose my conceptions and narration shall stand only upon two feet, Negation and Affirmation.

"There are some things that I must deny, and yet justly; somewhat I must affirm, and that I shall do ingenuously and fully. First, for the Negative; I never framed, made nor contrived, compiled or preferred, any such Petition or Protestation; I never was at any meeting, consultation or conference about any such business; nay, I never heard of any intention, much less execution of any such thing, until it was the Wednesday in Christmas, being the 29th of Dec.; at which time it was brought unto my house in Covent Garden, being betwixt 6 and 7 at night, (subscribed by some of my brethren) with a request, that I would subscribe suddenly also.

"Now for the affirmative; presuming that so learned, grave, and wise men, well versed in matters of that nature, would not have attempted any such thing, without good counsel, to the endangering of themselves and their brethren, and to the distaste of the Lords; and that all the rest of the Bishops in and about the city of London and Westminster, should subscribe thereunto; and that it should not be preferred, without the approbation and mature deliberation of good counsel, and of us all, I made one; and set my hand thereto, which I do now ac-

\* He died in 1642. See Nere's Fasti.

knowledge, and never yet denied; nay, the first time that I came to the bar in the Lords house, I acknowledged that my hand was to it; and divers of this honourable presence heard it so read unto them, out of the Journal of the Lords house.

"Now, Mr. Speaker, if these my deceived and deceiving thoughts (to use St Bernard's phrase) have led me into an error, the error is either 'ex ignorantia juris,' an unskilfulness in the law, or 'debilitate judici,' a weakness of my apprehension; else 'ex nimia credulitate,' out of my too much confidence in others; not of any prepossessed malice, or out of a spirit of contradiction, as the Lord knoweth. The School-men tell me, that 'duo sunt in omni peccato,' there is 'actio et malitia actionis;' I own the action, the subscription is mine; but that there was any malice in the action (to cross any vote, at which I was not present) I utterly disavow.

"And therefore, Mr. Speaker, I shall become an humble suitor, that I may recommend three most humble requests, or motions, to this honourable house. This first motion is, That you would be pleased to tread in the steps of Constantine the Christian emperor, who had ever this resolution, That if he should see *sacerdotem peccantem*, an offending divine, he would rather cast his purple garment upon him, than reveal the offence, for the Gospel's sake of Christ. My second motion is, That if my Subscription shall make me a Delinquent, and worthy of any censure, that then the censure may not exceed, but, at the highest, be proportionable to the offence. The third and last motion is, That that of Plautus (after my 58 years painful, constant, and successful preaching of the Gospel of Christ, in the kingdom of England, and in foreign parts) may not be verified of me, 'Si quid bene feceris, levior pluma est grata; si quid mali feceris, plumbeas iras gerunt.'

"And now, Mr. Speaker, I might here tender divers motions to the consideration of this honourable house, for favourable construction of my rash Subscription, I may say commiseration; yet all without ostentation, that is far from me; but rather for the consolation of my perplexed soul; for the great affliction, restraint and disgrace, which I have long sustained: (which is far greater than ever I endured before, and transcends the dangers and jeopardies of the seas, and the miseries of the wars, whereof I have had my share) and partly for the vindication of my former reputation, calling, and profession; which is now so clouded, eclipsed and blackened in the eyes of the world, and scandalized in the mouths of the vulgar multitude; that, without reparation, and restoration to my former esteem, I shall never have heart to shew my face in the pulpit any more, wherein I have wished to end my days.

"But I waive all these, because I will not detain you from other occasions of greater im-

portance; and desire my ways may be made known unto you, rather by inquisition, than my own relation; only I shall appeal to the noble knights, citizens, and burghesses of the diocese where I now live; and of the other wherein formerly I did live, as namely the honourable city of Bristol; which I can never name without that title, not only in respect of their piety, unity, and conformity, but also in respect of their love, kindness, and extraordinary bounty unto me. I appeal to them for their testimonies and knowledge of my courses amongst them: nay, I appeal to the records of that honourable house, where, I am confident, after 16 months sitting, there is nothing found that can trench upon me, neither, I hope, will nor may be.

"And therefore my humble suit is for expedition, if you intend accusation; or rather for your mediation, that I may speedily return to my own home and cure, 'to redeem the time because the days are evil,' as the Apostle speaks; and to regain the esteem and reputation which I was long in getting, and long enjoyed, but lost in a moment; for if I should out live (I say not my bishopric, but my credit,) my grey hairs and many years would soon be 'brought with sorrow to the grave.'

"I have done, Mr. Speaker; and there remains nothing now but that I become a Petitioner unto Almighty God, that he will be pleased to bestow upon you all the patriarch's blessing, even the dew of Heaven, and the fatness of the earth: and I end with that of St. Jude, 'mercy, peace, and love be multiplied unto you;' I say again, with a religious and affectionate heart, 'mercy, peace, and love be multiplied unto you!'

March 29. Mr. Glyan, one of the Committee on the Bill against the Bishops, made a Report of it to the House, on which they came to the following Resolutions: 1. "That a question shall be put upon every particular Bishop. 2. That by this bill the archbishop of York shall not forfeit the inheritance of his temporal estate." The like question was put upon Thomas, bishop of Durham, and so, severally on all the rest, and resolved negatively. But upon another question, Whether the Archbishop and the rest, separately, should by that Bill, forfeit the profits and issues of their temporal estates, freehold lands, and lands of inheritance, during their lives; It was carried in the affirmative. Resolved, That the archbishop of York shall be allowed 100*l.* per annum.

May 5, 1642. On the humble Petition of the twelve Bishops, imprisoned now in the Tower above eighteen weeks, they were released by the Lords, upon bail. The Archbishop of York and his soreties were bound in 5,000*l.* and he ordered not to go to his diocese during the disturbances in that county.

159. Proceedings, by the King's Command, upon Charges of High Treason and other high Misdemeanors, against Lord KIMBOLTON\* and Five Members of the House of Commons; namely, Mr. DENZIL HOLLIS, Sir ARTHUR HASLERIG, bart. Mr. JOHN PYM, Mr. JOHN HAMPDEN, and Mr. WILLIAM STRODE :† 17 CHARLES I. A. D. 1641. [Rushw. Coll. Whitlocke's Memoirs. 2 Cobb. Parl. Hist. 1005.]

January 3, 1641-2.

THE Lord Keeper told the House of Lords, That he was commanded by the King to let them know, his majesty had given commands to his Attorney General (sir Edward Herbert), to acquaint their lordships with some particulars from him.

Hereupon, the said Attorney standing up at

\* Lord Kimbolton was the eldest son of the earl of Manchester, and had, some years before, been called up to the house of lords, by Charles I. He had, after this period, a considerable share in the conduct of affairs, as General of the Parliament Forces during the Civil War.

† "On the application of the Commons for their former Guard, the King assured them, on the 'word of a monarch,' his favourite asseveration, that there was no cause of apprehension or alarm, for his care should extend to the protection of each member, as much as to the preservation of himself or of his children. The same day was selected to prefer an Impeachment of Treason against lord Kimbolton and the Five Commoners, Hampden, Pym, and Hollis, Haslerig and Strode. Their persons were first demanded by a serjeant at arms. Next day, the king, attended by his guards and retinue, claimed the members in person from the commons; and proceeded to expose his dignity to the contempt of the city, by the same vain requisition at Guildhall:" says Mr. Laing whose reflections on these transactions are very valuable. See 3 Hist. of Scotland, 219, et seq.

Concerning the effect of these Proceedings, lord Clarendon says, "The truth is, it cannot be expressed how great a change there appeared to be in the countenance and minds of all sorts of people, in town and country, upon these late proceedings of the king. They, who had before even lost their spirits, having lost their credit, and reputation, except amongst the meanest people, who could never have been made use of by them, when the greater should forsake them; and so despaired of ever being able to compass their designs of malice, or ambition (and some of them had resumed their old resolutions of leaving the kingdom) now again recovered greater courage than ever, and quickly found that their credit and reputation was as great as ever it had been; the court being reduced to a lower con-

dition, and to more disesteem and neglect than ever it had undergone. All that they had formerly said of Plots and Conspiracies against the Parliament, which had before been laughed at, was now thought true and real; and all their fears and jealousies looked upon as the effects of their great wisdom and foresight. All that had been whispered of Ireland, was now talked aloud and printed; as all other seditious pamphlets and labels were. The shops of the city generally shut up, as if an enemy were at their gates ready to enter, and to plunder them; and the people in all places at a gaze, as if they looked only for directions, and were then disposed to any undertaking.—On the other side, they, who had, with the greatest courage and alacrity, opposed all their seditious practices, between grief and anger were confounded with the consideration of what had been done, and what was like to follow. They were far from thinking that the Accused Members had received much wrong, yet they thought it an unseasonable time to call them to an account for it. That if any thing had been to be done of that kind, there should have been a fitter choice of the persons, there being many of the house, of more mischievous inclinations and designs against the king's person, and the government, and who were more exposed to the public prejudice, than the lord Kimbolton was; who was a civil, and well natured man, and had rather kept ill company, than drank deep of that infection and poison, that had wrought upon many others. Then sir Arthur Haslerig, and Mr. Strode, were persons of too low an account and esteem; and though their virulence, and malice was as conspicuous, and transcendent as any man's, yet their reputation, and interest to do mischief otherwise than in concurring in it, was so small, that they gained credit and authority by being joined with the rest, who had indeed a great influence. However, since there was a resolution to proceed against those men, it would have been much better to have caused them to have been all se-

which he received from his majesty, and was commanded to desire their lordships to have it read :” which Articles were read, *in hæc verba* :

ARTICLES of HIGH TREASON, and other high MISDEMEANOURS, against the Lord KIMBOLTON, Mr. DENZIL HOLLIS, Sir ARTHUR HASLEBRIE, Mr. JOHN PYM, Mr. JOHN HAMPDEN, and Mr. WM. STRODE :

I. That they have traiterously endeavoured to subvert the fundamental Laws and Government of this kingdom, to deprive the King of his regal power, and to place in the subjects an arbitrary and tyrannical power, over the Lives, Liberties, and Estates of his majesty's liege subjects.

II. That they have traiterously endeavoured, by many foul aspersions upon his majesty and his government, to alienate the affections of his people, and to make his majesty odious to them.

III. That they have endeavoured to draw his majesty's late Army to disobedience to his commands, and to side with them in their traiterous designs.

IV. That they have traiterously invited and encouraged a foreign power to invade his majesty's kingdom of England.

V. That they have traiterously endeavoured to subvert the Rights and very Being of Parliaments.

VI. That, for the completing of their traiterous designs, they have endeavoured, as far as in them lay, by force and terror, to compel the Parliament to join with them in their traiterous designs; and, to that end, have actually raised and countenanced tumults against the King and Parliament.

VII. That they have traiterously conspired to levy, and actually have levied, War against the King.

Then Mr. Attorney said, “ That he was further charged to desire on his majesty's behalf, 1. That a Select Committee of Lords, under a command of secrecy, may be appointed to take the examination of such Witnesses as the King will produce in this business, as formerly hath been done in cases of like nature, according to the justice of this house. 2. Liberty to add

verally arrested, and sent to the Tower, or to other prisons, which might have been very easily done before suspected, than to send in that manner to the houses with that formality, which would be liable to so many exceptions. At least, they ought so far to have imparted it to members in both houses, who might have been trusted, that in the instant of the accusation, when both houses were in that consternation (as in a great consternation they were) somewhat might have been pressed confidently towards the king's satisfaction; which would have produced some opposition and contradiction, and might have prevented that universal concurrence and dejection of spirit, which seized upon, and possessed both houses.”

and alter, if there should be cause. 3. That their lordships would take care for the securing of the Persons, as, in justice, there should be cause.”

Mr. Rushworth says, “ That Lord Kimbolton, being present in the House, stood up and offered to obey whatever the lords should order; but prayed that, as he had a Public Charge, he might have a Public Clearing.” Accordingly, the Lord Steward, the Lord Chamberlain, earls of Bath, Southampton, Warwick, Bristol, and Holland, with the assistance of Mr. Serjeant Whitfield and Mr. Serjeant Glanville, were appointed a Committee to consider Precedents and Records, touching the regularity of this Accusation; whether there had ever been any such Proceedings before in this house, and whether such an Accusation may be brought by Mr. Attorney, into this house, against a peer.—Lord Clarendon adds, “ The House of Peers was somewhat appalled at this alarm; but took time to consider of it till the next day, that they might see how their masters the Commons would behave themselves; the lord Kimbolton being present in the house, and making great professions of his innocence, and no lord being so hardy as to press for his commitment on the behalf of the king.” This general silence was the more remarkable, since the noble historian assures us, “ That the lord Digby had promised the king to move the House for the commitment of lord Kimbolton, as soon as the Attorney General should have accused him, which, if he had done, would probably have raised a very hot dispute in the house, where many would have joined him. On the contrary, he seemed the most surprized and perplexed with the Attorney's Impeachment; and sitting at that time next the lord Kimbolton, with whom he pretended to live with much friendship, he whispered him in the ear with some commotion, (as he had a rare talent at dissimulation) ‘ That the king was very mischievously advised; and that it should go very hard, but he would know whence that counsel proceeded; in order to which, and to prevent further mischief, he would go immediately to his majesty;’ and so went out of the House: whereas he was the only person who gave the counsel, named the persons, particularly the lord Kimbolton, (against whom less could be said than against many others, and who was more generally beloved) and undertook to prove that the said lord Kimbolton told the rabble, when they were about the parliament house, that they should go to Whitehall.

The day before, the King had sent Mr. Francis, serjeant at arms, to the House of Commons; where, being admitted without his mace, he delivered this Message;

“ I am commanded by the king's majesty, my master, upon my allegiance, that I should come and repair to the House of Commons, where Mr. Speaker is; and there to require of Mr. Speaker Five Gentlemen, members of the House of Commons; and that these Gentlemen

being delivered, I am commanded to arrest them, in his majesty's name, of High Treason. Their names are, Mr. Hollis, sir A. Hasleing, Mr. Pym, Mr. Hampden, and Mr. William Strode."

The Commons immediately ordered the Chancellor of the Exchequer, lord Falkland, sir Philip Stapleton, and sir John Hotham, to attend his majesty; and acquaint him, "That this Message was a matter of great consequence, as it concerned the Privilege of Parliament, and therein the Privileges of all the Commons of England: That this House will take it into serious consideration, and will attend his majesty, with an Answer in all humility and duty, and with as much speed as the greatness of the business will permit: And that, in the mean time, the house will take care that those gentlemen, mentioned in the Message, shall be ready to answer any legal charge laid against them."

The Speaker did then, by command of the house, enjoin those Five Members, particularly, one by one, to give their attendance on this House, *de die in diem*, until further Orders: And, in the afternoon of the 4th, there is a Memorandum entered, "That all the Five Members, aforementioned, did appear in the house, according to yesterday's injunction."

January 4.

The King came into the House of Commons and took Mr. Speaker's Chair.\*

\* The imprudence of this Proceeding against the Five Members, and the detriment which it occasioned to the royal cause, are thus described by lord Clarendon: "In this sad condition was the King at Windsor, fallen in ten days from a height and greatness that his enemies feared, to such a lowness, that his own servants durst hardly avow the waiting on him. For though, it is true, the acts of the House of Commons, and the Tumults, were as great affronts to majesty, before this last act upon the members, as any that could be imagined possible to succeed, yet the house of peers was then well disposed, and might have been managed with a little patience, to have blasted all the extravagances of the Commons. And the truth is, the greatest extravagances appeared to the standers by to be but the attempts of persons in despair, and the strugglings of men at the last gasp. And, without doubt, if the king could have had the patience to have sate still a spectator of the dissensions between the two houses, and encouraging the lords, who were firm to him, and putting those matters in issue, wherein the commons had invaded both his and the lords privileges; if he had commanded his counsel at law and the judges, to have proceeded by the strict rules of the law against seditious persons at large, for preaching and printing against the peace of the kingdom, and put the commons house either to have been quiet, whilst their champions were exemplarily punished, which would have put a speedy end

"Gentlemen; I am sorry to have this occasion to come unto you, \*\*\*\*\*"

Resolved, upon the question, "That it

to their licence, or to have appeared the champions for an infamous act against the law and the justice of the kingdom, their jurisdiction would probably in a short time have been brought within the due limits, and the stoutest factor for the violent party been glad to have compounded for an act of oblivion.

"And I have heard from credible persons, that the chief of that faction afterwards confessed, that if that extraordinary accident had not happened to give them new credit and reputation, they were sinking under the weight of the expectation of those whom they had deluded, and the envy of those whom they had oppressed. I am sure, they who out of conscience, and loyalty to their king and country, diligently attended the public service, were strangely surprized at the matter and manner of that accusation; and foresaw, from the minute, the infinite disadvantage it would bring to the king's affairs. Not that they thought the gentlemen accused, less guilty; for their extreme dishonest acts in the house were so visible, that nothing could have been laid to their charge incredible; but the going through with it was a matter of so great difficulty and concernment, that every circumstance ought to have been fully deliberated, and the several parts distributed into such hands, as would not have shaken in the execution. And the saying, that the king had not competent persons enough, whom he might trust in so important a secret (which I believe was true) is rather an argument, that the thing was not to be attempted at all, than that it was to be attempted in that manner; for whoever would have betrayed the trust, would be sure to find fault with it, when it was endeavoured without him, especially if it miscarried. The truth is, there was little reason to believe, that the house of peers would commit the lord Kimbolton upon the accusation of Mr. Attorney in that conjuncture of time; and less that the house of commons would deliver up their members to the serjeant at arms, when they should be demanded; which was an irregular thing, and implied unreasonably, that they had some power to keep them, who were desired to deliver them. Yet if the choise had been better made, and the several persons first apprehended, and put into distinct close custodies, that neither any body else should have heard from them, nor they one from another, all which had not been very difficult, the high spirit of both houses might possibly have been so dejected, that they might have been treated withal. But even that attempt had been too great for the solitary state the king was in at that time; which was most naturally to have been improved by standing up in his guard, and denying all that was in his power to deny, and in compelling his ministers to execute the law in those cases that demonstrably concerned the public peace."

‘House shall adjourn itself till to-morrow one of the clock.’

This is all that is entered in the Journals of the Commons relating to this extraordinary affair. Probably the great confusion the House was in, at this juncture, broke off all punctualities in the Clerk, and prevented any further entry about it there: But Mr. Rushworth, then Clerk-Assistant to the House, is very explicit in his printed Collections: which, to make the matter as clear as possible, we shall give in his own words.

He begins with telling us, That when the five accused Members came this day, after dinner, into the house, they were no sooner sat in their places, but the house was informed by one captain Langrish, lately an officer in arms in France, that he came from among the officers and soldiers at Whitehall; and understanding by them that his majesty was coming with a guard of military men, commanders and soldiers, to the House of Commons, he passed by them, with some difficulty, to get to the House before them, and sent in word how near the said officers and soldiers were come; whereupon a certain Member of the house\* having also private intimation from the countess of Carlisle, sister to the earl of Northumberland, that endeavours would be used this day to apprehend the Five Members, the House required the Five Members to depart the House forthwith, to the end to avoid combustion in the House, if the said soldiers should use violence to pull any of them out. To which command of the house four of the said Members yielded ready obedience; but Mr. Strode was obstinate, till sir Walter Earle, his ancient acquaintance, pulled him out by force, the King being at that time entering into the New Palace-yard, in Westminster: and as his majesty came through Westminster-Hall, the commanders, reformadoes, &c. that attended him, made a lane on both sides the hall, through which his majesty passed, and came up the stairs to the House of Commons, and stood before the guard of Pensioners and Halberteers, who also attended the King's person; and the door of the House of Commons being thrown open, his majesty entered the House, and as he passed up towards the Chair, he cast his eye on the right hand, near the bar of the house, where Mr. Pym used to sit; but his majesty not seeing him there, knowing him well, went up to the Chair, and said, ‘By your leave, Mr. Speaker, I must borrow your Chair a little.’ Whereupon the Speaker came out of the Chair, and his majesty stepped up into it. After he had stood in the Chair a while, he cast his eye upon the members as they stood up uncovered, but could not discern any of the Five Members to be there; nor, indeed, were they easy to be discerned, had they been there, among so many bare faces all standing up together. Then his majesty made this Speech:

‘Gentlemen, I am sorry for this occasion of coming unto you. Yesterday I sent a Serjeant at arms upon a very important occasion, to apprehend some that by my command, were accused of High Treason, whereunto I did expect obedience, and not a Message. And I must declare unto you here, that, albeit, no king that ever was in England shall be more careful of your privileges, to maintain them to the uttermost of his power, than I shall be; yet you must know, that in cases of Treason no person hath a privilege; and therefore I am come to know if any of these persons that were accused are here: for I must tell you, Gentlemen, that so long as these persons that I have accused, for no slight crime, but for Treason, are here, I cannot expect that this House will be in the right way that I do heartily wish it; therefore I am come to tell you, that I must have them whosoever I find them. Well, since I see all the birds are flown, I do expect from you, that you shall send them unto me as soon as they return hither. But I assure you, on the word of a king, I never did intend any force, but shall proceed against them in a legal and fair way, for I never meant any other.—And now, since I see I cannot do what I came for, I think this no unfit occasion to repeat what I have said formerly, That whatsoever I have done in favour, and to the good of my subjects, I do mean to maintain it. I will trouble you no more, but tell you, I do expect, as soon as they come to the House, you will send them to me; otherwise I must take my own course to find them.’

When the King was looking about the House, the Speaker standing below, by the Chair, his majesty asked him, Whether any of these persons were in the House? Whether he saw any of them; and where they were? To which the Speaker, falling on his knee, thus answered:

‘May it please your majesty; I have neither eyes to see nor tongue to speak in this place, but as the house is pleased to direct me, whose servant I am here; and humbly beg your majesty's pardon, that I cannot give any other answer than this to what your majesty is pleased to demand of me.’

The King having concluded his Speech, went out of the House again, which was in great disorder, and many members cried out aloud, so as he might hear them, Privilege! Privilege! and forthwith adjourned till the next day at one o'clock.

The same evening his majesty sent James Maxwell, usher of the House of Peers, to the Commons, to require Mr. Rushworth, the clerk-assistant, whom his majesty had observed to take his Speech in characters, at the table in the house, to come to his majesty; and when Maxwell brought him to the king, his majesty commanded him to give him a copy of his Speech in the house. Mr. Rushworth humbly besought his majesty, hoping for an excuse, to call to mind how Mr. Francis Nevil, a York-

\* This member was Mr. Pym. See sir Philip Warwick's Memoirs, p. 204.

shire member of the House of Commons, was committed to the Tower, but for telling his majesty what words were spoken in the House by Mr. Henry Bellasis, son to the lord Faulconbridge; to which his majesty smartly replied, 'I do not ask you to tell me what was said by any member of the house, but what I said myself.' Whereupon he readily gave obedience to his majesty's command, and in his majesty's presence, in the room called the Jewel-House, he transcribed his majesty's speech out of his characters, his majesty staying in the room all the while; and then and there presented the same to the King, which his majesty was pleased to command to be sent speedily to the press, and the next morning it came forth in print.\*

January 5.

The Commons met again; when the Door

\* The following very curious Account of this transaction is transcribed from some Minutes, taken at the time, by sir Edmund Verney, knight marshal, who afterwards bore the king's standard at the Battle of Edgehill, and was killed in that action:—"On Tuesday, the 4th January, 1641, when the house met after their adjournment, till one o'clock, it was moved, (considering there was an intention to take the Five Members by force) to avoid all tumult, 'That they be commanded to absent themselves,' but entered no orders for it, and then the Five Gentlemen went out of the house: a little after the King came with all his guards, and all his pensioners, and 2 or 300 soldiers and gentlemen. He commanded all the soldiers to stay in the Hall, and sent us word, he was at the door. The Speaker was commanded to sit still, with the mace lying before him; then the King came to the door and took the Palsgrave in with him, and commanded all that came with him, upon their lives, not to come in; so the doors were kept open, and the earl of Roxborough stood within the door, leaning upon it. Then the King came upwards towards the Chair with his hat off, and the Speaker stepped out to meet him; when the King stepped up to his place, and stood upon the step, but sat not down in the Chair. Then he said, 'He expected obedience to his Message of yesterday, and not an answer.' On the Speaker's saying, 'That he had neither eyes or tongue to see or say any thing but what the house commanded him,' The king said, 'He thought his own eyes as good as his, but that the words were flown; but he expected that the house would send them to him, for their treason was told, and such a one as we should all thank him to discover;' and so went out, putting off his hat till he came to the door. Upon this, the House resolved to adjourn immediately till to-morrow, at one o'clock, and consider what was to be done."—These Minutes taken at the time, in pencil, were found among the Papers of the late earl Verney, written by his ancestor, sir Edmund Verney; and though at so distant a period, were plain enough to be legible.—*Hatsell's Precedents*, vol. 4. p. 106.

being ordered to be locked, the key brought up the outward rooms cleared of all persons, except servants to members of the House; and also that some of those servants should be sent forth to see what numbers of people are repairing towards Westminster, and to bring notice to the House; a Committee was named to consider of some way for vindicating the Privilege of Parliament, and for providing for the Safe of both Kingdoms, and to present it to the house with all speed.—A debate then arose, Whether this House should be adjourned to Tuesday next, Jan. 11, and a Committee be appointed to sit in Guildhall, in London, during that time. The question was put, and on a division of the house, there appeared to be 170 members for it, and 86 against it.

The House then agreed upon a Declaration to be forthwith printed and published concerning the late Breach of Privilege; which was done in these words:

"Whereas his majesty, in his royal person yesterday, being the 4th day of January, 1641 did come to the House of Commons, attended with a great multitude of men, armed in a warlike manner, with halberds, swords, and pistols who came up to the very door of this House and placed themselves there, and in other places and passages near to the House, to the great terror and disturbance of the Members thereof, then sitting, and, according to their duty, in a peaceable and orderly manner, treating of the great affairs of both the kingdoms of England and Ireland; and his majesty having placed himself in the Speaker's Chair, did demand the persons of divers Members of this House to be delivered unto him: It is this day declared by the House of Commons, That the same is a high Breach of the Rights and Privilege of Parliament, and inconsistent with the Liberties and Freedom thereof; and therefore this house doth conceive they cannot, with the safety of their own persons, or the indemnity of the rights and privileges of parliament, sit here any longer, without a full vindication of so high a breach, and a sufficient guard wherein they may confide; for which both Houses jointly, and this House by itself, have been humble suitors to his majesty, and cannot as yet obtain.—Notwithstanding which, this House, being very sensible of the great trust reposed in them, and, especially at this time, of the manifold Distraction of this kingdom, and the lamentable and distressed condition of the kingdom of Ireland, doth order, That the House shall be adjourned until Tuesday next at one of the clock; and that a Committee, to be named by this House, and all that will come to have voices, shall sit at the Guildhall in the City of London, to-morrow morning at 9 of the clock, and shall have power to consider and resolve of all things that may concern the good and safety of the city and kingdom; and particularly, how our Privileges may be vindicated, and our persons secured, and to consider of the affairs and relief of Ireland; and shall have power to advise and consult with any person or persons,

touching the premises, and shall have power to send for parties, witnesses, papers, and records. —And it is further ordered, That the Committee for Irish Affairs shall meet at the Guildhall aforesaid, at what time they shall think fit; and consult and do, touching the affairs of Ireland, according to the power formerly given them by this House; and that both the said committees shall report the results of their considerations and resolutions to the House."

Mr. Fiennes was sent up to the Lords, to acquaint their lordships with the Reasons why the Commons adjourned till Tuesday next, and had fixed a Committee to act at Guildhall; which are much the same as those expressed in the above Declaration. Adding, that they still desired their Lordships to move his majesty for such a sufficient Guard about the Parliament, as both Houses might approve of. The Lords returned for Answer to this last affair, That they had already sent to the King about it, and his majesty's Answer was, That he would do it speedily; but their Lordships would renew it again. The Lords ordered also, That the Report from the Committee appointed to consider of the Accusation the Attorney-General had brought against the lord Kimbolton and the five Members of the Lower House, should be considered of; and that all the capital proceedings in parliament be searched into on this occasion.

The following Speeches were made by Mr. Pym, sir A. Haslerig, and Mr. Strode, in vindication of themselves against the Articles of High Treason, exhibited by sir Edward Herbert, the king's Attorney-General.

Mr. Pym spoke as follows: "Mr. Speaker; These Articles of High Treason, exhibited by his majesty against me, and the other gentlemen in the Accusation charged with the same crime, are of great consequence, and much danger to the state. The Articles in themselves, if proved, are, according to the laws of the land, High Treason. 1. To endeavour to subvert the fundamental laws of the land, is, by this present parliament, in the earl of Strafford's case, adjudged High Treason. 2. To endeavour to introduce into this kingdom an arbitrary and tyrannical form of government, is likewise voted High Treason. 3. To raise an Army to compel the parliament to make and enact laws, without their free Votes and willing proceedings in the same, is High Treason. 4. To invite a foreign force to invade this land, to favour our designs agitated against the king and state, is High Treason. 5. To animate and encourage riotous assemblies and tumults about the parliament, to compel the king to assent to votes of the house, is Treason. 6. To cast aspersions upon his majesty and his government, to alienate the affections of his people, and to make his majesty odious unto them, is Treason. 7. To endeavour to draw his majesty's army into disobedience, and to side with us in our designs, if against the king, is Treason.

"I desire, Mr. Speaker, the favour of this house to clear myself, concerning this Charge; I shall only parallel and similize my actions, since the sitting of this parliament, with these Articles. 1. Mr. Speaker, if to vote with the Parliament, as a member of the house, wherein all our Votes ought to be free, (it being one of the greatest privileges thereof to have our debates, disputes, and arguments in the same unquestionable) be to endeavour to subvert the fundamental laws; then am I guilty of the first Article. 2. If to agree and consent with the whole state of the kingdom, by vote, to ordain, and make laws for the good government of his majesty's subjects, in peace and dutiful obedience to their lawful sovereign, be to introduce any arbitrary and tyrannical form of government in the state; then am I guilty of this Article. 3. If to consent, by vote with the parliament, to raise a Guard or Trained Band, to secure and defend the persons of the Members thereof, being environed and beset with many dangers in the absence of the king; and, by vote with the house, in willing obedience to the royal command of his sacred majesty, at his return, be actually to levy arms against the king; then am I guilty of this Article. 4. If to join with the Parliament of England, by free vote, to crave brotherly assistance from Scotland, (kingdoms both under obedience to one sovereign, both his loyal subjects) to suppress the Rebellion in Ireland, which lies gasping every day in danger to be lost from his majesty's subjection, be to invite and encourage foreign power to invade this kingdom; then am I guilty of high treason. 5. If to agree with the greatest and wisest Council of State, to suppress unlawful Tumults and riotous assemblies; to agree with the house, by vote, to all Orders, Edicts, and Declarations for their repelling, be to raise and countenance them in their unlawful actions; then am I guilty of this Article. 6. If, by free vote, to join with the parliament in publishing of a Remonstrance, in setting forth Declarations against Delinquents in the state; against Incendiaries between his majesty and his kingdom; against Ill Counsellors, which labour to avert his majesty's affection from parliaments; against those ill-affected Bishops that have innovated our Religion, oppressing painful, learned, and godly ministers, with vexatious suits and molestations in their unjust courts; by cruel Sentences of pillory and cutting off their ears; by great fines, banishments, and perpetual imprisonment; if this, Mr. Speaker, be to cast aspersions upon his majesty and his government, and to alienate the hearts of his loyal subjects, good Protestants and well-affected in religion, from their due obedience to his royal majesty; then am I guilty of this Article. 7. If to consent by vote with the parliament, to put forth Proclamations, or to send Declarations to his majesty's army, to animate and encourage the same to his loyal obedience; to give so many Subsidies, and raise so many great sums of money, willingly, for their keeping on foot to serve his majesty upon his royal com-

mand, on any occasion; to apprehend and attach, as Delinquents, such persons in the same as are disaffected both to his sacred person, his crown and dignity, to his wise and great council of Parliament; to the true and orthodox doctrine of the Church of England, and the true Religion, grounded on the doctrine of Christ himself, and established and confirmed by many acts of parliament in the reigns of Hen. 8, Edw. 6, Eliz. and king James, of blessed memory: If this be to draw his majesty's army into disobedience, and side with us in our designs; then am I guilty of this Article.

"Now, Mr. Speaker, having given you a touch concerning these Articles, comparing them with my actions ever since I had the honour to sit in this House as a member thereof, I humbly crave your consideration and favourable judgment of them; not doubting, they being weighed in the even scales of your wisdom, I shall be found innocent and clear from these crimes laid to my charge. I humbly crave your further patience, to speak somewhat concerning the exhibiting of this Charge: which is to offer to your consideration these Questions, viz. 1. Whether to exhibit Articles of High Treason by his majesty's own hands in this house, agrees with the Rights and Privileges thereof? 2. Whether for a Guard armed to come into the Parliament, to accuse any of the Members thereof, be not a Breach of the Privilege of Parliament? 3. Whether any of the Members of Parliament being so accused, may be committed upon such accusation, without the whole consent thereof? 4. Whether a Parliament hath not privilege to bail any member so accused? 5. Whether if any of the Members of a Parliament so charged, and by the House discharged, without release from his majesty, may still sit in the house as members of the same?" And thus Mr. Speaker, I humbly crave pardon for my presumption in so far troubling this honourable house, desiring their favourable consideration of all my actions; and that I may have such Trial as to this wise council shall seem meet, cheerfully submitting myself and actions to the righteous judgment of the same."

Sir *Arthur Haslerig* spoke as follows: "Mr. Speaker; This misfortune of mine seems to me, at the first, exceeding strange; not only in respect of the crimes laid to my charge, but most of all having thereby incurred not only the disfavour but ireful displeasure of his sacred

majesty. For the first, knowing the innocence and integrity of my heart, that it is free from any such crime, either in thought, word, or deed, against either my gracious sovereign, or my native country, I shall the more easily bear the burden of the charge; but to groan under the burden of a most pious and wise prince's displeasure, wounds me sore.

"Mr. Speaker, I humbly desire so much favour of this honourable house, to speak something of my innocence in all these crimes I am charged with. This House can, I hope, witness for me the manner of my carriage and disposition in any debate or arguments wherein I have been one. I hope nothing hath proceeded from me that can come, any ways, within the compass of treason. In all disputes and conclusions of any matter by vote of the house, my vote hath commonly agreed with the major part; then I hope my vote in parliament, being free, cannot be treason.

"The Articles, exhibited against me and the other gentlemen, are of a most dangerous and pernicious consequence, if we should be found guilty of them; which God defend. I would to God those persons, that inceased his majesty against us, which is easily conceived who they are, were as free from thoughts and words, nay actions within the limits of treason, as I hope we shall prove ourselves, by God's blessing.

"Mr. Speaker, it is alledged we have endeavoured to subvert the fundamental laws of this land, abridge the king's power, and deny his royal prerogatives. Give me leave, I beseech you, to speak concerning this Article. There are not, as I conceive, two forms of government in this kingdom; there are not two sorts of fundamental laws; there is but one form of government; one sort of fundamental laws; that is, the common laws of this land, and acts, statutes and ordinances of parliament. These two depend and hang one upon another, so that they cannot be separated; and he that subverts the one, breaks and infringes the privileges of the other; and he that breaks the privileges of the one subverts the other. Now, to speak freely in parliament, freely called and assembled by his majesty's most royal authority; to vote freely in the same, upon the conclusion of any bill to be made a law by the whole consent of parliament, and assented to by his majesty; to agree in voting with the whole parliament, against delinquents and malefactors in the state, to bring them to condign punishment for the same; to give my vote, in the house, for removing evil counsellors from his majesty, and to place loyal and faithful ones in their place; to assent, with the whole state assembled together in council, for the settling of peace and tranquillity in the same; to ordain and enact such wholesome laws and ordinances, whereby his majesty's good subjects may be governed in righteousness and good obedience; to vote, with the house, for redressing the many grievances of the commonwealth; if these be to subvert the fundamen-

\* We do not find, by the Journals, that the Commons came to any formal Résolution on this or any of the foregoing Questions: They seem to have thought it unnecessary; for it appears from those authorities, that Mr. Pym, Mr. Strode, and Mr. Hollis, were of a committee *inter alios* upon a Bill 'For enabling the Lords and Commons to adjourn this present Parliament from place to place, as they shall see cause,' on the 11th of January, being the first day of their meeting after the late adjournment.

tal laws of the land, then, Mr. Speaker, am I guilty of this Article, in giving my vote against the earl of Strafford; in voting those acts already made and passed by his majesty; in voting against the Bishops; in protesting to maintain the fundamental laws of the land, and the true Protestant religion, according to the true doctrine of the church of England. I say then, in this am I guilty; but if this be not to subvert the laws of the land, then am I clear from being guilty of this Article.

“ Mr. Speaker, I come now to the other Articles of the Charge: To endeavour to bring in an arbitrary and tyrannical form of government: To invite tumults and unlawful resorts of multitudes of people to the parliament, to be a colour for our designs: to raise forces and armies in this land to assist us in our practices: To invite foreign princes to bring an army into the land: To endeavour, by Declarations, Proclamations, and otherwise, to alienate the hearts of his majesty's loyal subjects from their lawful sovereign, thereby to avert their due obedience from him; and, having an evil opinion of his sacred majesty, to persuade them to side with us, and take their parts to effect our designs. Give me leave, I beseech you, to speak concerning these crimes: And first, Mr. Speaker, to endeavour to bring in an arbitrary power and tyrannical form of government in the subject, is to deny parliamentary proceedings: To oppose the laws, enacted by parliaments; to incense his majesty against parliaments; to protest and petition against the proceedings thereof; is to bring in an arbitrary form of government: but to agree with the parliament, being a member thereof, by vote, to make and enact laws, I conceive this cannot be termed arbitrary; neither, I persuade myself, can the effects thereof be tyrannical.— 2dly, Concerning the late Tumults about the house, I am innocent thereof; neither came they by my invitation or encouragement; I always thought their resorts, in that sort, were illegal and riotous: I have voted with this house for suppressing; have assented to all orders for their appeasing; agreed with the parliament, in all things, concerning their petitions and requests: then I hope this honourable house will not conceive me guilty of this crime: If it be one, and granted, yet I conceive far without the limits of treason, for these reasons: 1. They came not with arms to force any thing to be done in parliament; but humbly, by petition, shewed their grievances, and desired redress thereof; which is one privilege, and one of the greatest, to make their griefs known to a parliament, and by them to be relieved. 2. They offered no assault; but, being assaulted, preserved themselves, and departed. 3. The matter of their clamour was not against the king, nor any of his council; it was not against the lords, nor the house of commons; it was only against delinquents, against such as had been the greatest oppressors of them. 3dly, I come, in a word, to other Articles of the Charge, which I intend to speak of, under fa-

vour, altogether: I pray you, who raised any Army, actually, in this land, but the Trained Bands? which was done by the parliament, for the security of their own persons in the king's absence; and, in obedience to his commands, at his return home, they were discharged, and afterwards again raised by his majesty's own royal authority. And for inviting or procuring any foreign princes to aid me with an army, I am altogether innocent therein; I know of no aid required but from Scotland, which is done by the parliament; my vote, as a member thereof, only agreeing with them in the same; and that aid is procured for his majesty's assistance, in subduing the rebellion, in Ireland, and, as I conceive, for no other purpose.

“ And for the last Article wherewith I am charged, I hope to be cleared by this whole house: For what Declarations, or Proclamations, have been published but by authority of the parliament, joined with his majesty's most royal power and assent thereunto? It is manifest to all people that nothing is published by the parliament, or any of the members thereof, but tendeth to the winning of the hearts of his majesty's subjects to dutiful obedience, to intire love and tender affection, towards their gracious sovereign. And I dare confidently say, that there is none of his majesty's subjects, that are true Protestants and well-affected to religion, but, upon the least command of his majesty will spend their dearest blood in defence of his sacred person, his queen and princely issue; the laws and constitutions of this kingdom; parliaments and the rights and privileges thereof; religion and the doctrine of the church of England: and, therefore, I conceive I am far from intending any treason either against his majesty or his kingdoms.”

Mr. *Strode* spoke thus:—“ Mr. Speaker; It is the saying of the wise man, even of a king, Solomon, the wisest of all kings that ever reigned on this earth, ‘ That in the countenance of the king is life and death;’ like to the sun, which, by the sending forth of his glorious beams upon the fruits of the earth, nourisheth, and causeth the same to fructify and grow, gives vigour and strength to all the creatures that live in and upon the same; and, by withdrawing his light, being overshadowed with clouds, keeps back the growing and flourishing of the creature; yea, and by continuance in that his hidden motion, procureth at last the utter withering and perishing thereof.

“ His gracious majesty is our sun and comforter; at such time as his glorious beams of grace and favour reflect upon his good subjects, they increase and grow in an intire and tender affection towards his majesty, so that no distempers, or troubles whatsoever, can separate between him and them. But this our sun, when overshadowed with clouds, and mists of discontent and disfavour towards his people, causeth them to wander in obscurity and darkness, even ready to faint and despair of any design they take in hand, for the safety and

security of his majesty and his kingdoms; yea, strikes them, as it were, with death and utter destruction.

"Mr. Speaker, I persuade myself our gracious sovereign, in his own natural disposition, is altogether bright and comfortable; he never causeth, or retracts to himself, any discontent towards his loving subjects, but by suggestion, information, or instigation, of malignant spirits, disaffected both to the tranquillity and peace of his majesty and the whole state of this kingdom. It is the policy only of desperate and evil-minded persons, that have been the only troublers of our Israel, finding themselves in danger (by calling of them to an account for their misdeeds and misdemeanors) to be brought to punishment for the same, to cast aspersions upon those faithful counsellors of the king and state, who strive to prevent their malicious and wicked designs from overthrowing and destroying the same. It cannot, sir, enter into my thoughts that ever his majesty, of himself, could have gone about to interrupt and hinder the happy proceedings of this his great and wise council, by accusing and impeaching the members thereof of high treason; as if they, whose hearts are united to their lawful sovereign, by nature bound to the defence and security of their country, and, by covenant with God, tied to the maintenance of his true religion, should be the betrayers and destroyers of them all together.

"These Articles exhibited against myself and the other gentlemen, are, I conceive, not really intended against us as if we were actually guilty of the same; but only to procure our absence from this honourable house, that we may not have our free votes in the trial of the Twelve Bishops accused; by whom, I verily believe, these Articles were drawn; and only by their advice and such as favour their cause, exhibited. And I persuade myself, were we to be apprehended and taken from this house, under pretence of trial, we should, by force, immediately be cut off; although his majesty conceives, and is really minded, we should be legally proceeded against; of such powerfulness are those persons that were the authors of them.—These Articles, if we were actually guilty, are, many of them, I confess, high treason; as to endeavour to subvert the fundamental laws; to introduce an arbitrary form of government in the state, &c. I need not speak much to clear myself of these crimes. I hope this honourable house will make such a favourable construction of all my actions, that it will be manifest to all the world, that they have been far without the compass of treason either against my king or country. And if it shall be conceived by this honourable assembly, (as learnedly it hath already been delivered by that worthy gentleman that spake first) that, as members of a parliament, to agree with the same in all their votes, for the punishment of delinquents, settling of religion, securing of their own persons by a guard, or desiring assistance of our brethren in Scotland to suppress

the rebellion in Ireland, be treason; then, I think, we are all guilty of these Articles; otherwise are we clear and innocent of the same.

"Mr. Speaker, I humbly desire of this honourable house, that I may have a speedy trial upon the same; that, as I shall be found guilty by the judgment of this high court, I may know my sentence, which I shall willingly submit unto; be it to my condemnation, or preservation; wishing and praying with all my heart, that none of these evil and malicious designs, in agitation against the parliament, by any malignant persons whatsoever, may take effect to hinder the blessed proceedings thereof; but that you may go on, with courage and cheerfulness, to settle all things aright, both in church and state, for the government thereof in perpetual peace and tranquillity."

The Accused Members having withdrawn themselves into the city of London, the King went thither on the 5th of January, and made a Speech to the Common Council assembled at the Guild-hall, requiring their assistance in apprehending the said Members; and dined with one of the Sheriffs, where he was nobly entertained. On the 8th he issued a Proclamation, commanding all magistrates and officers to apprehend and carry them to the Tower. And on the 10th, the day before the Parliament met again, the King removed himself and royal family to Hampton Court; from thence to Windsor; and, after several other removes, went down to York on the 19th of March following.

January 11.

The Accused Members were triumphantly brought from London to Westminster by water, by a great number of citizens and seamen, in boats and barges, with guns and flags, braving as they passed by Whitehall, and making large protestations, at Westminster, of their adherence to the parliament.

The lord Kimbolton, one of the Accused Members, moved the lords, "That he lying under so great a Charge, which concerned his life, his estate and his honour, which is dearest to him, the Attorney General might be commanded to prosecute the Accusation against him, and he is ready to answer it: but if he be not ready, his lordship said, he tendered himself to their disposal and commands, his own innocency making him thus confident."—The Attorney General being commanded to speak about this matter, along with the other prosecutions, said "That what he did was by the express command of the King his master, and not done by his advice; since that he had attended the King to take his further directions therein. His Majesty told him, That when he went out of town he would leave somewhat with the Lord Keeper to be laid before this House; but upon his asking the Lord Keeper, he told him the King had not left any, but had sent for him to attend him speedily."

January 13.

The Lord Keeper reported what his Majesty had commanded him to deliver, concerning the lord Kimbolton and the Five Members: "That his majesty taking notice that some think it disputable, whether this Proceeding against that Lord and those Gentlemen be legal and agreeable to the Privileges of Parliament, and being very desirous to give satisfaction to all men in all matters that may seem to have relation to Privilege, is pleased to wave his former Proceedings; and all doubts being by this means settled, when the minds of men are composed, he intends to proceed therein, in an unquestionable way; and assures his Parliament that, upon all occasions, he will be as careful of their Privileges, as of his life and his crown."

The Attorney General was then heard what he could say to justify himself, for charging the lord Kimbolton and the Five Members, and to prove it was a Parliamentary Proceeding, and no Breach of Privilege. And, first, he said, "That for the matter of the Charge, and the framing of the Articles, he had nothing to do with them, neither did his Majesty advise with him therein; but the bringing of the Charge into this house, which he did by his Majesty's command, and only in obedience thereunto: and for the legality of this proceeding, he insisted upon, and opened at large, the whole proceedings of the king's Attorney in the earl of Bristol's Case, 2 Caroli\*," which being done, the House appointed to take this business into further consideration the next day.

The lord Kimbolton, upon his Majesty's late Message concerning himself and the Five Members, moved, "That since his Majesty waved the former Proceeding, the House would become suitors to his Majesty, that he may be brought to as speedy a Trial as may be, that so he might not lie under this accusation; but be cleared or judged."

The Commons also having desired liberty to examine the Attorney General, upon certain interrogatories, he made it his humble request to the lords, "That he may be excused from answering to any questions to discover what the King hath committed to him as secret council, which, by his oath, he is bound not to reveal; but what concerns himself he would willingly and ingenuously answer unto." And it was the sense of the House, That if Mr. Attorney, at the Conference, shall desire not to answer to some questions that may be asked him, the house will take it into consideration whether it be fit for him to answer or not.

January 14.

The Lord Keeper acquainted the Lords, That he had just then received a Letter and a Message from the King; both which were ordered to be read, and were in these words:

"My Lord Keeper; This is to command you to deliver that which is contained within

the inclosed Paper, as a Message from me to both houses; and that instantly, and without delay. And so I rest your assured friend,  
Windsor, Jan. 14, 1641. CHARLES R."

The MESSAGE was as follows:

"His Majesty being no less tender of the Privileges of Parliament, and thinking himself no less concerned, that they be not broken, and that they be asserted and vindicated whenever they are so, than the Parliament itself, hath thought fit to add to his last Message, this profession, That in all his Proceedings against the lord Kimbolton, and the Five Members, he had never the least intention of violating the least Privilege of Parliament; and in case any doubt of Breach of Privilege remains, he will be willing to clear that, and assert those, by any reasonable way that his Parliament shall advise him to: upon confidence of which he no ways doubts his Parliament will forthwith lay by all jealousies, and apply themselves to the public and pressing affairs, and especially to those of Ireland; wherein the good of this kingdom, and the true religion (which shall ever be his majesty's first care) are so highly and so nearly concerned; and his majesty assures himself, that his care of their privileges will increase their tenderness of his lawful prerogative, which are so necessary to the mutual defence of each other; and both which will be the foundation of a perpetual perfect intelligence between his majesty and his parliament, and of the happiness and prosperity of his people."

January 15.

Serjeant Wyld reported the Conference had on Thursday night last with the Lords, concerning Mr. Attorney's exhibiting Articles in the Lords house against Members of this house, as follows: "The Conference consisted of two parts; 1. The Narrative Part, That these Articles exhibited by Mr. Attorney, and entered in the lords house, was a Breach of Privilege of Parliament; and that, in due time, this house would desire that justice may be done upon Mr. Attorney. The second part was, To examine Mr. Attorney upon certain Questions, and to receive his Answer: 1. He being asked, Whether he contrived, framed, or advised the said Articles, or any of them; if not, then whether, he doth know or hath ever heard, who did frame, contrive, or advise the same or any of them? To this he answered, 'That he would deal clearly, freely, and ingenuously, and that he should say the same which he had before delivered to the lords, and should need no long time to answer this; for, that he had done none of these three, that is, neither framed, advised, or contrived these Articles, or any of them; and would be contented to die if he had.' 2. Being demanded, Whether he knew the truth of these Articles, or any of them, of his own knowledge, or had it by information? To this he answered, 'He did know nothing, of his own knowledge, of the

\* See vol. 3, p. 1267.

truth of these Articles, or any part of them, nor hath heard it by information.' All that ever he hath heard concerning this was from his master. 3. Being asked, Whether he will make good these Articles, when he shall be thereunto called in due course of law? To this he answered, 'He cannot do it, nor will not do it, otherwise than as his master shall command him and shall enable him, no more than he that never heard of them can do it.' 4. Being asked, From whom he received these Articles, and by whose direction and advice he did exhibit them? He answered, 'He did exhibit them by his master's command, and from his hands he did receive them.' 5. Being asked, Whether he had any testimony, or proof, of the Articles before the exhibiting of them? He gave this Answer, 'That he received the command of his majesty: but whether he had any proof then offered, or intimation of testimony, to make good those Articles, he desired time to consider of it.' He was pressed again to make Answer to this, but desired time to consider of it, saying, 'There was a secret trust between a master and a servant, much more in this case.'—Hereupon it was ordered, "That some way be thought of for charging Mr. Attorney, by this house, as criminous, for exhibiting those Articles in the lords house, against members of this house, without any information or proof that appears; and that this house, and the gentlemen charged by him, may have reparation from him; and that he may put in good security to stand to the judgment of parliament." It was also resolved, "That a committee be appointed to prepare a charge against Mr. Attorney, upon these Votes of the house."

The Lord Keeper reported the effect of another Conference held this afternoon, by the desire of the Commons, concerning the King's last Messages, about the Impeachment of their Five Members, "That the Commons had taken them into serious consideration, and had resolved upon the Question, That the said Impeachment, and the Proceedings thereupon, is a high Breach of Privilege of Parliament: That, in order to vindicate this Breach, they propose a Committee of both Houses may meet to consider about it; and to petition his majesty, That those who informed him against these Members, may come in five days time to charge them; or else that they may be cleared, in such a way as the Parliament shall think fit." The Lords, hereupon, passed the same Vote of the Commons, and appointed a committee of 21 of their house to meet with a proportionable number of the Commons, to consider of this affair.

January 19.

The following Declaration, in pursuance of three Reports from the late Committee at Guildhall and Grocers-hall, appeared in print, according to an Order of the 19th:

A DECLARATION of the House of Commons touching a late Breach of their Privileges for the Vindication thereof, and of divers Members of the said House.

"Whereas the chambers, studies, and trunk of Mr. Hollis, sir A. Haslerig, Mr. Pym, Mr. Hampden, and Mr. Strode, members of the house of commons, upon Monday the 3d of the instant Jan. by colour of his majesty's warrant have been sealed up by sir W. Killegree, and sir W. Fleming, and others; which is not only against the Privileges of Parliament, but the common liberty of every subject; which said members, afterward the same day, were, under the like colour, by serjeant Francis, one of his majesty's sergeants at arms, contrary to all former precedents, demanded of the Speaker, sitting in the house of commons, to be delivered unto him, that he might arrest them of High-Treason: And whereas afterwards, the next day, his majesty, in his royal person, came to the said house, attended with a great multitude of men, armed in warlike manner with balberts, swords, and pistols; who came up to the very door of the house, and placed themselves there, and in other places and passages near to the said house, to the great terror and disturbance of the members, then sitting, and according to their duty, in a peaceable and orderly manner, treating of the great affairs of England and Ireland: And his majesty, having placed himself in the Speaker's chair, demanded of them the persons of the said members to be delivered unto him; which is a high breach of the rights and privileges of parliament, and inconsistent with the liberties and freedom thereof; And whereas afterwards his majesty did issue forth several warrants to divers officers, under his own hand, for the apprehension of the persons of the said members; which, by law, he cannot do, there being not, all this time, any legal charge or accusation, or due process of law, issued against them, nor any pretence of charge made known to that house: All which are against the fundamental liberties of the subject and the rights of parliament. Whereupon we are necessitated, according to our duty, to declare, and we do hereby declare, That, if any person shall arrest Mr. Hollis, sir A. Haslerig, Mr. Pym, Mr. Hampden, and Mr. Strode, or any of them, or any other member of parliament, by pretence or colour of any warrant issuing out from the king only, he is guilty of the breach of the liberties of the subject, and of the privilege of parliament, and a public enemy to the common-wealth; and that the arresting of the said members, or any of them, or of any other member of parliament, by any warrant whatsoever, without a legal proceeding against them, and without consent of that house whereof such person is a member, is against the liberty of the subject, and a breach of privilege of parliament; and the person which shall arrest any of these persons, or any other member of the parliament, is declared a public enemy of the commonwealth: Notwith-

standing all which, we think fit further to declare, That we are so far from any endeavour to protect any of our members that shall be, in due manner, prosecuted, according to the laws of the kingdom, and the rights and privileges of parliament, for treason, or any other misdemeanor, that none shall be more ready and willing than we ourselves, to bring them to a speedy and due trial; being sensible, that it equally imports us, as well to see justice done against them, that are criminous, as to defend the just rights and liberties of the subjects and parliament of England.—And whereas, upon several examinations taken the 7th day of this instant Jan. before the committee appointed by the house of commons to sit in London, it did fully appear, that many soldiers, papists and others, to the number of about 500, came with his majesty on Tuesday the 4th instant, to the said house of commons, armed with swords, pistols, and other weapons; and divers of them pressed to the door of the said house, thrust away the door-keepers, and placed themselves between the said door and the ordinary attendants of his majesty, holding up their swords; and some holding up their pistols ready cocked near the said door; and saying, 'I am a good marksman; I can hit right, I warrant you;' and they not suffering the said door, according to the custom of parliament, to be shut; but said, 'They would have the door open; and, if any opposition were against them, they made no question, but they should make their party good; and that they would maintain their party.' And, when several members of the house of commons were coming into the house, their attendants desiring that room might be made for them, some of the said soldiers answered, 'A pox of God confound them;' and others said, 'A pox take the house of commons; let them come, and be hanged; what a-do is here with the house of commons.' And some of the said soldiers did likewise violently assault, and by force disarm, some of the attendants and servants of the members of the house of commons, waiting in the rooms next the said house; and, upon the king's return out of the said house, many of them, by wicked oaths, and otherwise, expressed much discontent, that some members of the said house, for whom they came, were not there: And others of them said, 'When comes the Word?' And no word being given at his majesty's coming out, they cried, 'A Lane, A Lane.' Afterwards, some of them, being demanded, 'What they thought the said company intended to have done,' answered, 'That, questionless, in the posture they were set, if the Word had been given, they should have fallen upon the house of commons, and have cut all their throats.' Upon all which, we are of opinion, that it is sufficiently proved, that the coming of the said soldiers, papists, and others, with his majesty, to the house of commons, on Tuesday, being the 4th day of this instant January, in the manner aforesaid, was to take away some of the members of the said house; and, if they should have found opposi-

tion or denial, then to have fallen upon the said house in a hostile manner: And we do hereby declare, That the same was a traitorous design against the king and parliament. And whereas Mr. Hollis, sir A. Haslerig, Mr. Pym, Mr. Hampden, and Mr. Strode, members of the said house of commons, upon report of the coming of the said soldiers, papists, and others, in the warlike and hostile manner aforesaid, did, with the approbation of the house, absent themselves from the service of the house, for avoiding the great and many inconveniences which otherwise apparently might have happened: Since which time, a printed Paper, in the form of a Proclamation bearing date the 6th day of this instant January, hath issued out, for the apprehending and imprisoning of them; therein suggesting that, through the conscience of their own guilt, they were absent, and fled; not willing to submit themselves to justice: We do further declare, That the said printed Paper is false, scandalous, and illegal; and that, notwithstanding the said printed Paper, or any warrant issued out, or any other matter yet appearing against them, or any of them, they may and ought to attend the service of the said house of commons, and the several committees now on foot.—And we do further declare, That the publishing of several Articles, purporting a form of a Charge of High Treason against the lord Kimbolton, one of the members of the lords' house, Mr. Hollis, sir A. Haslerig, Mr. Pym, Mr. Hampden, and Mr. Strode, members of the house of commons, by sir Wm. Killigree, sir Wm. Fleming, and others, in the Inns of Court, and elsewhere, in the king's name, was a high breach of the privileges of parliament; a great scandal to his majesty, and his government; a seditious act, manifestly tending to the subversion of the peace of the kingdom; and an injury and dishonour to the said members, there being no legal charge or accusation against them.—That the privileges of parliament, and the liberties of the subject, so violated and broken, cannot be fully and sufficiently vindicated, unless his majesty will be graciously pleased to discover the names of those persons, who advised his majesty to issue out warrants for the sealing of the chambers and studies of the said members: to send a serjeant at arms to the house of commons to demand the said members: to issue out several warrants, under his majesty's own hand, to apprehend the said members: his majesty's coming thither in his own royal person; the publishing of the said Articles and printed paper, in the form of a Proclamation, against the said members, in such manner as is before declared: to the end that such persons may receive condign punishment.—And this house doth further declare, That all such persons as have given any counsel, or endeavoured to set or maintain division or dislike, between the king and parliament; or have listed their names, or otherwise entered into any combination or agreement, to be aiding, or assisting, to any such counsel or

endeavour, or have persuaded any other so to do; or that shall do any the things above-mentioned: and shall not forthwith discover the same to either house of parliament; or the Speaker of either of the said houses respectively, and disclaim it; are declared public enemies of the state and peace of this kingdom, and shall be inquired of, and proceeded against accordingly."

January 20.

The Commons drew up a Petition, and sent it to the Lords; which was in these words:

To the King's Most Excellent Majesty; The humble PETITION of the Lords and Commons, now assembled in Parliament,

"Sheweth; That whereas, of late, there have been sundry and great Breaches of the Privileges of Parliament; and your majesty, in a Message to both houses, was pleased graciously to express, that you would be willing to clear and assert them, by any reasonable way your parliament should advise you to; we shall, in convenient time, present the particulars to you, together with our advice and desires, for the asserting our privileges; and whereas your majesty by another Message to both houses, hath expressed an apprehension of some treasonable matter to have been committed, by the lord Kimbolton, Mr. Hollis, and the rest; and declared, That you will, hereafter, proceed against them in an unquestionable way: We your lords and commons do humbly beseech your majesty that you would be pleased to give directions, that your parliament may be informed, in a few days, what proof there is against them; that, accordingly, there may be a parliamentary and a legal proceeding against them; and they receive, in justice, what shall be their due, either for their acquaintance or condemnation.—This we humbly conceive we are bound to crave, both in regard of ourselves, and of them; being unfit that we should have any of our members liable to so great a charge; and thereby hindered from doing the service they respectively owe to their several houses; as that they, if innocent, should longer lie under so great a weight; or, if guilty, avoid their deserved punishment."

The Lords agreed to this Petition, and ordered some of their body to join a Committee of the Commons to present it to the King the next day.

January 24.

The King's Answer to the above Petition, was reported to the lords by the earl of Newport, to this purport:

"That he doth well approve of the desire of both Houses, for the speedy proceedings against the persons mentioned in the Petition; wherein his majesty finding the great inconveniences, by the first mistake, hath endured some delay, that he might be informed in what order to put the same. But, before that be agreed upon, his majesty thinks it unusual to discover what proof there is against them; and therefore thinks it necessary, lest a new mistake should

breed more delay, which his majesty to his power will avoid, that it be resolved, Whether he be bound, in respect of Privilege, to proceed against them by Impeachment in parliament, or whether he be at liberty to prefer an indictment at the common law, in the usual way, or have his choice of either: whereupon his majesty will give such speedy directions for the prosecution, as will shew his desire to satisfy both houses, and put a determination to this business."

February 1.

This day the House of Commons sent up a draught of a Petition to the king, concerning the lord Kimbolton and the Five Members, in which was recited all that was passed in that business; and that they once again besought his majesty to give directions that they might be informed, in two days time, what proofs there were against them, that they might be brought to a legal trial, it being the undoubted right and privilege of parliament, that no member can be proceeded against without their consent. To which Petition they desired their lordships concurrence; which was granted.

To this Petition, his Majesty returned this Answer:

"That as he once conceived that he had ground enough to accuse them, so now his majesty finds as good cause wholly to desert any further prosecution of them: and, for a further testimony of his majesty's real intention towards all his loving subjects, some of whom haply may be involved in some unknown or unwilling errors; for the better composing and settling of fears and jealousies, of what kind soever; his majesty is ready to grant as free and general a pardon, for the full contentment of all his loving subjects, as shall, by the approbation of both Houses of Parliament, be thought convenient for that purpose."

February 17.

The Commons prepared another Petition to the King, concerning the Accused Members, which they sent up to the Lords for their concurrence, who joined with them in it. This Petition was as follows:

"To the King's Most Excellent Majesty; The humble PETITION of the LORDS and COMMONS, now assembled in Parliament.

"Sheweth; That whereas your majesty, in Answer to their late Petition touching the proceedings against the lord Kimbolton, Mr. Hollis, &c. members of the parliament, was pleased to signify, That as your majesty once conceived that you had ground enough to accuse them, so now your majesty finds as good cause, wholly to defer any further prosecution of them: notwithstanding which, they remain still under that heavy charge so imputed unto them, to the exceeding prejudice not only of themselves, but also of the whole parliament: and whereas, by the express laws and statutes of this your realm, that is to say, by two acts of parliament, the one made in the 37th, and the other in the

58th year of the reign of your most noble progenitor king Edw. 3. If any person whatsoever make suggestion to the king himself of any crime committed by another, the same person ought to be sent, with the suggestion, before the chancellor or keeper of the great seal, the treasurer, and the great council, there to find surety to pursue his suggestion; which if he cannot prove, he is to be imprisoned till he hath satisfied the party accused of his damages and slander, and made fine and ransom to the king. The said lords and commons, therefore, humbly beseech your majesty that, not only in point of justice to the said members in their particular, but for the vindication of the rights and privileges of parliament, your majesty will be pleased to send the person, or persons that in this case made the suggestions or informations to your majesty against the said members of parliament, together with the said suggestions or informations, to your parliament; that so such fruits of the said good laws may be had as was intended by them, and the rights and privileges of parliament may be vindicated; which of right and justice, ought not to be delayed."

To which Petition, the King, on the 21st, desired further time to consider of his Answer.

March 4.

A Bill had been sent up by the Commons intitled, "An Act for the clearing and vindicating of the lord Kimbolton, and the Five Members, from a late feigned Charge or Accusation, of High Treason;" which was read a second time this day by the lords, and committed.

March 16.

The Bill, "For clearing the lord Kimbolton and the Five Members from a feigned Charge of High Treason;" also another Bill "For raising Money for the great Affairs of the kingdoms of England and Ireland," was read a third time by the lords, and passed. Ordered, "That the clerk of the crown, in Chancery, do forthwith draw up two commissions, and prepare them ready for the great seal, for his majesty's royal assent to be given to these two Bills."

Lord Clarendon thus represents the circumstances attending the triumphal Return of the Five Members to Parliament, "The Accused Members about two of the clock in the afternoon, on the 11th of January, being the next day after the King went to Hampton-Court, came from their lodgings in the city to Westminster, guarded by the Sheriffs, and Trained-bands of London and Westminster, and attended by a conflux of many thousands of people besides, making a great clamour against Bishops, and Popish Lords, and for the Privileges of Parliament; some of them, as they passed by Whitehall, asking with much contempt, 'what was become of the King and his Cavaliers?' and whither he was gone?"

"From London bridge to Westminster, the Thames was guarded with above a hundred lighters and longboats, laden with small pieces

of ordnance, and dressed up with wast-cloaths and streamers, as ready for fight. And that the Trained-bands of London might be under the command of a person fit to lead them, they granted a Commission to captain Skippon, who was Captain of the Artillery Garden, to be Major-general of the Militia of the city of London; an office never before heard of, nor imagined that they had authority to constitute. The man had served very long in Holland, and from a common soldier had raised himself to the degree of a Captain, and to the reputation of a good officer; he was a man of order and sobriety, and untainted with any of those vices which the Officers of that Army were exercised in; and had newly given over that service upon some exceptions he had to it, and, coming to London, was by some friends preferred to that command in the Artillery Garden, which was to teach the citizens the exercise of their arms. He was altogether illiterate, and having been bred always abroad, brought disaffection enough with him from thence against the church of England, and so was much caressed and trusted by that party.

"This man marched that day in the head of their tumultuary army to the Parliament House; where the Accused Members were no sooner entered, than they magnified 'the great kindness and affection they had found in the City, and their zeal to the Parliament, and if their expressions of it, upon this extraordinary occasion, had been somewhat unusual, that the house was engaged in honour to protect and defend them from receiving any damage.' Whereupon the Sheriffs of London were called into the House of Commons, and thanked by the Speaker for their extraordinary care and love expressed to the Parliament; and told, 'that they should have an Ordinance of Parliament for their Indemnity, declaring that all their actions of respect and kindness, which they had shewed to the lords and commons in London, and their attending them to, and at Westminster, was legal and justifiable.' The masters and officers of ships were likewise called in, and most heartily thanked for their kindness; and serjeant major-general Skippon appointed every day to attend at Westminster, with such a guard as he thought sufficient for the two houses. There was one circumstance not to be forgotten in the march of the citizens that day, when the shew by water was little inferior to the other by land, that the pikemen had fastened to the tops of their pikes, and the rest in their hats of their bosoms, printed Papers of the Protestation which had been taken, and enjoined by the House of Commons the year before for the defence of the Privilege of Parliament; and many of them had the printed Votes of the King's breaking their privileges in his coming to the house, and demanding their members.

"As soon as the citizens and mariners were discharged, some Buckinghamshire men, who were said to be at the door, with a Petition, and had indeed waited upon the triumph with a train of several thousand men, were called in;

who delivered their Petition in the name of the inhabitants of the county of Buckingham, and said it was brought to the town by about 6,000 men. They commended the unwearied pains of the House of Commons, for the redress of the pressures they had lain under, but complained that the success was not answerable, their endeavours being frustrated or retarded by a Malignant Faction of Popish Lords, Bishops, and Others; and now of late, to take all that little hope, was left, from them, of a future reformation, the very being of the Parliament was shaken, the Privileges thereof broken in a desperate and unexampled manner, and the Mem-

bers thereof unassured of their lives, in whose safety, the safety of them, and their posterity was involved. They held it therefore the duty according to their late protestation, to defend and maintain the persons and privilege thereof, to the utmost power of their lives and estates; to which purpose, they said, they were then come to make the humble tender of the service, and would remain in expectation of their commands and order; to the execution whereof they would with all alacrity address themselves, ready to live by them, or to die at their feet, against whomsoever should in any sort illegally attempt upon them."

160. Proceedings in Parliament against JAMES Duke of RICHMOND, as a Malignant\* and an Evil Counsellor to the King: 17 CHARLES I. A. D. 1641-2. † [Lords' Journals. 2 Cobb. Parl. Hist. 1061.]

January 26, 1641-2.

THE Lord Keeper having reported the Conference, concerning the Petitions for a Reformation in Church and State, a motion was made in the House of Lords for joining with the Commons in petitioning his majesty about putting the Forts and Militia of the Kingdom into safer hands, &c. upon the new Reasons offered at the said Conference. This occasioned a long debate, the House being in a committee; when, being resumed, some Lords

\* "This," says Clarendon, "was the term they imposed upon all those they meant to render odious to the people."

† As to the non-trial of persons impeached after January 1, 1641-2, see 3 Cobb. Parl. Hist. 45. "Although a Vote had passed on the 19th Dec. 1642, concerning Delinquents, 'That they were not all to be included in their designed Propositions to the king for Peace,' the House of Commons had got that Order overruled in some measure: for though a Committee of Lords had been appointed to consider of the naming of such Delinquents as were to be excepted out of their act of grace, who this day brought in their opinion, 'That those only who had been impeached before the 1st of January last should be proceeded against in Parliament;' yet the lord Digby, particularly, though he had been impeached since that time, was left to the Judgment of Parliament. And after a long debate, the following question was put: 'Those that are of opinion to agree with the committee, That at this time, such as the committee have named to be impeached by the commons should be left to the Trial of Parliament, omitting the rest of those which are impeached, say Content;' and it passed affirmatively. On which the following Lords entered their Dissent thus: 'We whose names are subscribed do conceive that the demanding, by

desired the house might be adjourned, to which the Duke of Richmond answered, "Let us put the question, Whether we shall adjourn for six months?" which words the house taking exception to, the Duke explained himself, "That he did not speak these Words positively, but meant that the House might be adjourned as well for six months, as to a time not limited." But this not satisfying, the Duke withdrew; when, after some more debate, the question was put, "Whether it shall be sufficient satisfaction to this house, That the lord

this House, of some to be left to justice, and leaving out of others, who are under the like Impeachment of High Treason, and have been, by force of arms, protected from being brought to a Trial, in the highest court of judicature, is an example of very ill consequence; because we conceive that it is not proper for this House to move the House of Commons, in the stopping of their Proceedings upon Impeachments; and that it doth not only give encouragement to a king to attempt the like stopping of justice by force, and from this precedent to stand upon the protecting of persons impeached; but to subjects also, who may be induced to undertake any thing in hopes of impunity, even from the desires of this house; which hath not demanded any one of those to be left to trial, who, since his majesty's going to York, have been impeached of High Treason, for actually levying war against the king and kingdom. Upon these, amongst other reasons, we have demanded our right of Protestation; and do now accordingly enter it, to clear ourselves from any inconveniences that may follow from these Votes; which are, in our opinion, very prejudicial to the privileges of parliament and the liberty of the subject. —(Signed) Warwick, Peterborough, Manchester, Say and Sele, Wharton, Bolingbroke, Willoughby of Parham, Brook Grey de Wark." 3 Cobb. Parl. Hist. 45.

duke of Richmond shall come to his place, and make an humble Submission and acknowledgment that he hath offended the house in speaking these Words inconsiderately and unadvisedly; and that he had no intention to have the House adjourned for six months, and that he craves their lordships pardon for it?" It was resolved in the affirmative.

Against which the following Protest was entered: "That, in respect the words spoken by the duke of Richmond tended much to the prejudice of the king and kingdom, we do protest against this vote, as not sufficient punishment for words of that dangerous consequence: Northumberland, lord Admiral; Bedford, Essex, Pembroke, Suffolk, Lincoln, Leicester, Warwick, Holland, Bolingbroke, Stamford, Conway, Wharton, Paget, Haunsden, Chandois, St. John, Spencer, Kymbolton, Brooke, Grey de Werk, Roberts, Howard de Esrick, Wilmoughby de Parham."

Then the Duke was called in, and, standing in his place, made this Acknowledgment: "That he doth, with all humility, acknowledge his great offence in speaking of Words concerning an Adjournment for Six Months, which he confesseth to have uttered unadvisedly, and inconsiderately; but professeth he did not intend or mean that any such adjournment should be; and craves the Pardon of the house for his offence therein."

January 29.

A Message to the Lords came up from the Commons, brought by sir Peter Wentworth, desiring a Conference, touching the duke of Richmond.† The Lords fixed upon a present meeting; when, being returned from it, the Lord Keeper reported the substance of it to this effect:

"That Mr. Glynn said, He was commanded by the House of Commons to acquaint their lordships with what Information had been given to them about the said Duke. 1. That he did write unto the town of Hithe, to chuse one captain Wimberley to serve for one of the barons there in this Parliament, but he was not chosen. A Letter was produced, wrote by one of the Duke's officers, said to be by his grace's direction, to prove this: as also, another to captain Collins, deputy lieutenant, directed to the mayor and jurats of Hithe, for the return of the said election. 2. Mr. Perd, a member of the house of commons, informed that house, That whilst the affair of Mr. Percy and Mr. Jernyn were before the house, and before their offences were declared High Treason, one Mr. Scroope, the duke's steward, came to him, and, in his master's name, desired Mr. Perd to

forbear to press the matter concerning those gentlemen; affirming, that it would be an acceptable service, and would do him good. Which last words Mr. Perd construed to mean, that the King and Queen would take notice of it as an acceptable service. This he would not say positively, but he believed it, &c. 3. That, by a copy of a Record\* then in their house, it did appear, that the duke of Richmond did, on the 26th of January instant, desire that the question might be put for the adjournment of the house of lords for six months.

"Upon the whole, the house of commons passed this vote, That they had sufficient cause to accuse the duke of Richmond as one of the Malignant-Party, and an Evil Counsellor to the king, for these Reasons: 1. That he endeavoured to have such Members chosen as he should name; and his way of menacing afterwards shews an intention to overthrow the Freedom of Election, and making a party in Parliament. 2. That he endeavoured to corrupt the Members of the House of Commons after they were elected, even in matters of the highest nature; for support of the Delinquents that were in question for endeavouring to bring the army upon the parliament. 3. The motion made in the house, if elected, would certainly be the loss of Ireland, and hazard the ruin of this kingdom; there being distractions at home, and imminent danger in Ireland, and no way to help both but by parliament; which, if it had been adjourned, in consequence that necessary and good act, for the continuance of this parliament, would have been ineffectual.

"Upon all which the House of Commons desire their lordships forthwith to join with them to petition his majesty, That the Duke may not have any access to the persons or courts of the king or queen; and that he may be removed from all offices and places of public trust. And that this may be done with all speed, in regard of the great places of trust and confidence he now holds."

Mr. Glynn concluded with telling their lordships, "That it was the care of the House of Commons to prevent the evils that hang over our heads; and they can do no less, in regard to the duty they owe to the King, who has called them as his council; to their country that hath intrusted them; and, lastly, they do it to satisfy their own consciences. They say they saw the stone that hit them, but could not discover the arm that threw it. They say they wash their hands of the ill consequences of these things, and lay it at their lordships door."

This Report being ended, the Duke of Richmond stood up, and made his humble desire,

\* Lord Clarendon says, "The motion for the adjournment was made by some of the Protesting Lords, who were not willing the matter of the Militia should then come into debate."

† James Stuart, duke of Lenox in Scotland, a near relation to the king.

\* This Record was probably the Votes or Journals of the Lords. It may be noticed, that this difference in the evidence of the offence charged, distinguishes this case from those of bishop Neile, vol. 2, p. 885, and of the lord Digby, No. 362, of the present volume.

"That he might have a copy of the Heads of this Information against him; and that he be allowed some short time to give in his Answer." The Lords agreed to this, and ordered the 31st instant, for that purpose.

January 31.

The Duke of Richmond brought in his Answer to the Charge against him from the Commons, which his grace, standing in his place, read in these words:

"My Lords, I take it this Vote of the House of Commons, which to me must prove very heavy, if it light upon me, is grounded on these three Reasons."—Then his grace repeated the substance of the three Articles brought by the Commons against him; and proceeded thus:

"Upon these three Reasons the House of Commons have desired your lordships to join with them in petitioning his majesty, That I might not have any access to the persons or court of the king and queen, &c. This is the Charge. Though these requests, if put in execution, would much afflict me; yet the sense of the House of Commons, and their ill opinion of me, which I judge by their Vote, is a greater cross than any that hath yet befallen me: but I have this comfort, that as the House of Commons have passed this Vote, and made these Requests upon me without hearing my Defence; so that, when your lordships shall hear my clear and ingenuous Answer, you, I hope, will be so far from joining with them in any such request to his majesty, that I shall presume to be an humble suitor to your lordships to clear my innocence to the House of Commons; and to set me right in their good opinion; which I much desire; who, I doubt not, are so just as to acquit or condemn, according as the cause shall appear unto them.

"And to your lordships I affirm, by all that may procure belief, that I did never malign the prosperity and happiness of the King, Kingdom, or Parliament; my interest in all may be some persuasion to justify what I say; or did give the King, my master, any council whatever, but what, in my own heart, I conceived to tend to the advancement of his honour, and maintenance of the public good of the kingdom; the union of the King and his People each to the other, and a right understanding and correspondence between him and his Parliament; and, from my heart, I cannot but declare against any, if there be any, of a contrary opinion.

"So far am I from a thought of prejudice to the kingdom of Ireland, that I would rejoice as much to see the Protestants there settled in peace and their possessions, the Protestant religion there established, the rebels there suppressed, and that kingdom reduced to obedience, as any of his majesty's subjects, and be as ready to join in giving assistance to effect it; for I crave leave to let your lordships know, that I have, some months since, sent into Ireland, of my own, 39 barrels of powder, 120 muskets and pikes, 60 corselets and head-pieces,

besides match and bullets, both for great ordnance and muskets, to Colmore castle, for the defence of that, Londonderry, and the country about it; and I left 200*l.* sterling in my agent's hands, for defraying the charge of transporting those things.

"But to apply myself to the particular Reasons of the Charge against me; it rests upon the truth of the fact, and your lordships judgment of it, either to acquit or condemn me, which I shall wholly submit to. I must crave your lordships pardon for giving any Answer at all to the third Reason, touching what passed from me in this house; as well in respect of the privilege of this house, where things of that nature, as I conceive, are to be questioned; as for that your lordships have already taken the same into your consideration, and I have undergone and performed your lordships Censure thereon before this Accusation. I know it will not seem just to your lordships, that I should be in a worse case than any other subject, to receive a double punishment for one and the same offence; and I know your lordships cannot but conceive it to be of more than ordinary consequence in the precedent.

"For the other, I shall give your lordships a distinct Answer. I must beg your leave to deny some things which have been charged upon me; but shall ingenuously confess whatsoever I know to be a truth, touching these things, how prejudicial soever it may prove to me; and rely more upon my own innocence, than to defend myself by denying a truth, or defending what is not so. 'Magna est veritas et prevalebit.' I wish it may do so in what concerns me. 'Regnet Justitia et ruat Cælum.'

"I conceive the Proof for the first Reason, inducing the House of Commons to believe an intention in me to overthrow the Freedom of Election, and make a party in Parliament, is upon the information of sir Henry Hayman, That I did write to the town of Hithe to chuse one captain Wimberly, to serve for one of the barons there, in this present Parliament, but he was not elected. The gentleman that gave the information I do not know; but it is true in this; and if it be an offence, I shall be so far my own accuser, that I have here brought a true copy of that Letter which I sent to that port, with a witness, who is without, to attest it. Other recommendation, than by that Letter only, I never made to that town; but I was so far, before this Accusation, from thinking it an offence, that I confess to your lordships I wrote the like Letter to other places, within the jurisdiction of the Ports; and I was informed, that the Warden of the Cinque Ports had, in all times, done the like.

"But this being no more than a bare recommendation, their choice was left free, and in some of those places my request prevailed, in some not: but I had never so much as a thought of ill against any who gave his vote against the party recommended; and will hazard my honour and fortune, that no man can

affirm that I ever gave them the least check upon this occasion.

"For the Copy of the Letter written by captain Collins, suggested to be one of my officers, and signified to be by my directions; I confess that Captain was Deputy of the Lieutenantcy of Dover Castle, which is under my command; but whether the Captain wrote such a Letter to the port of Hithe, I know not; but this I know for certain, that my directions imported not so much; and I hope your lordships will not think it just to charge me with a high crime, drawing on so heavy a punishment, for what an under-officer shall do without my knowledge. Yet, in this, I will not conceal one tittle of truth; for it is true I did write to captain Collins, and shall shew your lordships the very Letter itself, which I have sent for since your last sitting; and when I have told your lordships the occasion, which I shall make good by proof, I am confident you will find it far from a crime. It was this: I being warden of the Cinque Ports, and the Writ of Summons of Parliament directed to me, I make warrant to the several ports, for election of their barons; which, when done, they return them to me, and I return them with the writ of summons. Now, I having made warrants, accordingly, to the ports, and received and returned their barons elected, I was informed from the port of Sandwich, that some had given voices in their election who received alms from the town, with some other questions about elections in other places, particularly Rye, for which I was informed there was a Petition in parliament; and because I might be able to give an account touching all these Elections, if occasion were, I wrote to all the Ports in general, to be certified how the elections went by the poll; that is, to know how many voices went for the one, and how many for another; but for their names, I wrote not, though I had ground enough given me by the complaint of Sandwich; and, if captain Collins, upon this Letter of mine, have been too exact, I hope that shall not turn to my prejudice or his, since there was no ill intent, nor hath been any ill consequence from it: for this I affirm, confidently, to your lordships, That not one elector, in any of the ports, was ever menaced or ill used by me, or my direction. I cannot be disproved in this, and your lordships will hardly believe I wrote to captain Collins out of any intention of revenge; when, by the same letter, I desired to be certified of the poll in all the ports, as well where the party recommended by me was elected, as where he was not.

"This is the whole truth, and my Answer touching that business; and if it be an offence to write a Letter to recommend a gentleman for an election, yet, I hope, it will not deserve so severe a punishment. Sure I am, I never understood it an offence; for, if I had, I should not have done it myself, or believe it to be generally done by others, who, I hope, will never come in danger of punishment for it. And now, before I go to the second Head, I desire

your lordships to hear the Letters, and the witness upon the occasion of them."—Then the Letter to the Mayor and Jurats of Hithe was read, with their Answer to his grace, which contained much the same as is expressed in his Defence; as did, also, the Letter to captain Collins, in relation to the sending up the Polls of all the ports. Then the Duke proceeded:

"The second and only thing to be now answered, is, The endeavouring to corrupt the Members of the House of Commons, after they were elected, for support of Delinquents. The offence which is charged, I am confident your lordships will not find me guilty of; all the instance of proof is only upon a Message pretended to be delivered to one Mr. Perd, a member of the house of commons, by my Steward, who is my cousin, Adrian Scroop; and some speeches and gestures of mine to Mr. Perd, some time after that message. I know your lordships will not take this upon an implicit faith, that it is true, because it is charged against me. But I must crave your noble justice, as a free subject as well as a peer, to be judged *secundum probata* as well as *allegata*; and, notwithstanding this misfortune which is fallen upon me, I hope you believe I will not tell you an untruth. I confess I sent my steward to Mr. Perd; and he being one who has long been with me, and ever carried himself honestly and like a gentleman, gives me confidence that he delivered no such Message to Mr. Perd from me, as is charged. I protest to your lordships, upon my honour, that the Message I sent was no more than to this effect, 'That if, in the business of Mr. Percy, it fell in his way to do him any just favour, that I should take it as a courtesy, and express it to him upon any fair occasion.' This was without any other intimation or particular request whatsoever, and I am confident my servant delivered it to him no otherways; for he brought me a civil answer of his readiness to do any thing he might, with a good conscience, which was as much as I desired. And I was so far from taking offence, that, when I spoke to Mr. Perd, it was only to avow my servant, and to give him thanks; and no such thing happened as has been informed by him.

"Now, my Lords, Mr. Percy being my old acquaintance at school; in our travels, and here at home, having lived friends together; I thought I could do no less than to ask just favours for him in his distress. There was no unlawful thing desired; no bribes offered; if this be an offence, as I hope it is not, I am confident it will not be so heinous as to draw so heavy a censure upon me.

"And because, my Lords, I would be quit of this great burthen, I have caused Scroop to attend without; and desire your lordships to examine him, upon his oath, touching the truth of the message, and what passed between Mr. Perd and him; for I am guilty of no tittle more than what I have confessed to you. I know not what passed in the house of commons, or that Mr. Perd had ever spoken as

that business; or if Scroop had desired him not to press that business, or persuaded him not to call upon it, or intimated any thing of the king or queen, which I believe he did not, it was without any direction from me, and let him answer for it. But I rather believe there was no ill in the message, because Mr. Perd did not then, nor at any time since, till this question in the house of commons, call upon him or me concerning it.

"My Lords, I am no lawyer or orator, but I am a gentleman; and, in that consideration, so much concerned in what is moved against me, as though life or a total confiscation may not be desired, yet, upon the consequence of it, so much of honour and reputation depends, that I esteem it equal to any of those censures. But I have so much innocence in me, as makes me confident that I cannot miscarry by your lordships judgment; and therefore have adventured to make my own Defence, who best know the truth of my own heart; and so I submit myself and cause, which concerns you all, to your lordships judgment.

#### "RICHMOND."

The Duke having ended, he desired that Thomas Webb, his Secretary, might, upon oath, relate the occasion of writing the Letters to the Port Towns; which was one Complaint against his grace. Then the Lords sent a Message to the Commons, "That, in regard of their offer made at the last Conference, they desire that sir Henry Hayman and Mr. Perd may come to this house, and, upon oath, testify

what they know in the business concerning the duke of Richmond."

February 1.

The House of Lords proceeded in the business of the duke of Richmond; when Mr. Perd gave his Evidence, upon oath, nearly in the same manner as is before related. The Duke, having heard this Evidence, denied that he gave his steward, Mr. Scroop, any such directions as Mr. Perd alledged, and then withdrew. The house went into a debate, whether Mr. Scroop ought to be examined, upon oath, to know what directions the Duke gave him; because, thereby, he might accuse himself. The Judges Opinions being asked on the question, they were all in a mind, That, in their ordinary courts of justice, Mr. Scroop might, by law, be examined on oath.—Here upon Mr. Scroop was sworn and examined who said, "That the Duke directed him to go to Mr. Perd, and to desire him, that, in the business of Mr. Percy, he would, if it fell fairly in his way, rather incline to do good offices than press in rigour; and that thereby he might engage my Lord Duke to render him thanks, and return him such favours as fell in his way; and that he had no directions to speak of any favours intended from the king or queen."

This being done, the Lords considering of the Evidence on both sides, the affair of the Cinque Ports being dropped, the question was put, Whether that house should join with the Commons in the Petition against the Duke? It passed in the Negative.

### 161. Proceedings against Sir EDWARD HERBERT, knt. the King's Attorney General, upon an Impeachment for High Crimes and Misdemeanors: 17 CHARLES I. A. D. 1642. [4 Rushw. Coll. 489. 2 Cobb. Parl. Hist. 1089.]

THE dissatisfaction of the House of Commons with the conduct of the Attorney General has already appeared in the Case of lord Kimbolton, and the Five impeached Members. On the 14th of February 1641-2, the Commons sent up to the Lords an Impeachment against sir Edward Herbert the king's Attorney General, for High Crimes and Misdemeanors; which was read in *hac verba*:

"That he the said sir Edward Herbert, knight, his majesty's Attorney General sworn, the 3rd of Jan. 1641, contrary to his oath and the duty of his place, did, falsely, scandalously, and maliciously advise, contrive, and publish, certain false, scandalous, and malicious Articles of High Treason, against the lord Kimbolton, one of the members of the house of peers in parliament. Denzil Holles, esq. sir Arthur Haslerig, bart. John Pym, John Hampden, and William Strode, esquires, being then and yet Members of the House of Commons in Parliament; a copy of which Articles the House of

Commons have commanded to be delivered to their lordships.

"And the said sir Edward Herbert, the said 3rd of Jan. did falsely and maliciously exhibit the said Articles in the said house of peers, and caused the same to be entered into the Clerk's book of this house, intending and endeavouring thereby falsely, unlawfully, and maliciously to deprive the said houses of their said several Members, and to take away their lives, estates, and good names.

"All which doings of the said sir Edward Herbert, and every of them, were and are high Breaches of the Privileges of Parliament, tending to sedition, and to the utter subversion of the ancient Rights and being of Parliament, and Liberty of the Subject, and to the great scandal and dishonour of his majesty and his government, and were and are contrary to the oath of the said Attorney General, and to the great trust reposed in him by his majesty, and contrary to the laws of this realm, and a great

derogation to his majesty's royal crown and dignity.

"For which high Crimes and Misdemeanors, the said House of Commons, saving to themselves the liberty of exhibiting any further or other Impeachment or Accusation against the said sir Edward Herbert, do impeach him; and do pray, that he may be forthwith put to answer the premises, in the presence of the commons, and desire that his person may be secured."

Hereupon the Attorney General was sent for, and standing in his place, as Assistant, the Charge was read to him, who answered, "That he humbly desired to have a Copy of the Impeachment and such time allowed as their lordships do in justice give to others." The lords gave him eight days to bring in his Answer; and the earl of Monmouth offering himself as bail for his appearance, he was bound in 5,000*l.* bond for it.

February 22.

This day, the Attorney General delivered in his Answer to the Charge of the Commons against him, which was read before a Committee of that house in these words:

"The said Defendant, saving to himself now, and at all times hereafter, all just exception to the said Impeachment, as the same is charged, for Answer saith, and acknowledgeth, That he is, and the 3d day of January last past was, his majesty's Attorney General sworn: But whereas he is charged with the malicious, false, and scandalous advising and contriving the Articles in the said Impeachment mentioned, he saith; That he was, and is so far from any malice, falsehood or scandal, in the advising and contriving of the same, or any of them, that he did not at all advise or contrive the said Articles, or any of them: nor ever knew or heard of them, or any of them, until he received them from his majesty's hands, the said 3rd day of January last past, ready ingrossed in paper.

"And as to that part of the said Impeachment, which chargeth this Defendant with the exhibiting of the said Articles to this honourable house, he saith, That, upon the said 3rd day of January he repaired to his majesty by his command, who then delivered unto this Defendant a Paper containing the Articles in the said Impeachment mentioned, and did command him, in his majesty's name to acquaint this honourable house that divers great and treasonable Designs and Practices, against his majesty and the State, were come to his majesty's knowledge; for which his majesty commanded this Defendant, in his majesty's name, to accuse six Members, in the said Paper mentioned, of High Treason, and other High Misdemeanors, by delivering that Paper to your lordships, and to desire to have it read: And further to desire, in his majesty's name, that a Select Committee of lords might be appointed to take the examinations of such Witnesses as his majesty should produce, as formerly had

been done in cases of like nature, according to the justice of this house; and that Committee to be under a command of secrecy, as formerly; and further, in his majesty's name, to ask liberty to add and alter, if there should be cause, according to justice: And likewise, that their lordships would take care of the securing of the said persons as in justice there should be cause.

"That, according to his majesty's said command, this Defendant did come to this honourable house, the said 3rd day of January, and then, after the right honourable Edward lord Littleton, Lord Keeper of the Great Seal of England, had declared to this honourable house, that he was commanded by his majesty to let your lordships know, that his majesty had given this Defendant command to acquaint your lordships with some things from his majesty: this Defendant thereupon, the said 3rd day of January in this honourable house, before your lordships, then and there sitting in parliament, in obedience to his majesty's said commands, as a Message from him, did declare the aforesaid commands of his majesty: by acquainting your lordships, that the King had commanded him to tell your lordships, that divers great and treasonable Designs and Practices, against him and the state, had come to his majesty's knowledge, for which the king had given his command to accuse six persons of high treason, and other high misdemeanors, by delivering these Articles: And that he was commanded, to desire your lordships to have them read; which, by your lordships command, were accordingly read by the clerk: And then further declared, that he was also commanded by his majesty to desire, on his majesty's behalf, that a select committee might be appointed to take the Examination of such Witnesses as the king would produce, as formerly had been done in cases of like nature, according to the justice of this house; and this committee to be under a command of secrecy, as formerly: And that he was commanded to ask liberty to add according to justice; and that he was commanded to desire that your lordships would take care for the securing of those persons, as, in justice, there should be cause.

"And saith, he did not conceive there could be any offence, in what was so done by him, in this honourable house, in obedience to those his majesty's commands; being wholly thereby left to your lordship's wisdoms and judgments, being his majesty's great council and greatest court for advice and justice.

"And as touching the false, scandalous and malicious advising, contriving, or publishing the said Articles, or any other Articles against the said persons in the said papers mentioned, or any of them; or any breach of this Defendant's oath of Attorney General; and to the false, unlawful, and malicious exhibiting the said Articles into this honourable house, or causing any entry thereof to be made; and the intent and endeavour falsely, unlawfully, and maliciously to deprive this honourable house or the honour-

able house of commons, of any of the members of the said houses, or to take away any of their lives, estates, or good names; and every offence and misdemeanor charged by the said Impeachment upon this Defendant, he saith he is not guilty of them, or any of them, in such manner and form as by the said impeachments is charged. All which matters and things this Defendant is, and will be ready to aver and prove in such sort, as to this honourable house of parliament shall seem meet."

The Earl of Monmouth was again bail for Mr. Attorney, in 5,000*l.* bond for his appearance to abide the Judgment of the Lords in parliament, in this cause, and so the matter was dismissed for that time.

March 8.

This day a Letter from the King, directed to the Lord Keeper, was read in the House of Lords: viz.

"C. R. Right trusty and well-beloved Counsellor, we greet you well; We have thought good hereby to certify, that we did, on the 3rd of January last, deliver unto our Attorney General certain Articles of Accusation, ingrossed in a Paper, (a Copy whereof we have sent here inclosed) and did then command him, in our name to acquaint our House of Peers, that divers great and treasonable Designs and Practices against us and the state, had come to our knowledge; for which we did command him in our name, to accuse the Six Persons, in the said Paper mentioned, of High Treason, and other High Misdemeanors, by delivering the Paper to the said house, &c. [as before recited.] We further declare, That our said Attorney did not advise or contrive the said Articles, nor had any thing to do with, or in, advising any Breach of Privilege that followed after; and for what he did, in obedience to our commands, we conceive he was bound by his oath and the duty of his place, and by the trust by us reposed in him, so to do; and had he refused to have obeyed us therein, we would have questioned him for the breach of his oath, duty, and trust; but now having declared, That we find cause wholly to desist from proceeding against the Persons accused, we have commanded our Attorney to proceed no farther therein, nor to produce or discover any proofs concerning the same. Given at our court at Royston, the 4th day of March, 1641."

The Lords conceiving this Letter to be a pre-limiting the Judgment of their House, ordered to proceed in the business against the Attorney General, now; and this Letter to be taken into consideration afterwards, as a matter of great consequence. A Message was also sent to the Commons, to inform them of the Letter, and that their Lordships were ready to proceed against the Attorney General, if they would send a Committee of their house to manage the Evidence.

Accordingly, the Committee being come, the Lord Keeper told them they might begin their Evidence; whereupon,

Mr. Serjeant Wyld, one of them, said "That they were appointed by the house of commons, to make good their Charge against sir Edward Herbert, his majesty's Attorney General; a person of eminency in the common law, both eminent in place, and eminent in crime; the nature and deformity of which is set forth in the Impeachment, which he desired might be read. Then he observed, That his Charge was of three parts: 1. The advising and contriving of these foul Articles. 2. The publishing and exhibiting of them in this House. 3. The falsehood, scandal, malice, and other ingredients, mixed and incorporated so together, that they could not be more separated than blackness from the *Æthiopian*; or, if they could be separated, yet each of them was sufficient to call for Judgment against Mr. Attorney.—He then mentioned the exhibiting of these Articles, Jan. 3, 1641, and they were read out of the Journal Book of that day. Also the king's Proclamation, reciting, That his Attorney General, by his majesty's command, had accused the six Members of High Treason in the House of Lords. Likewise his majesty's Letters to Dover, and other ports, for the apprehending of them, reciting that they were accused by the Attorney General. Next, he desired that Mr. Attorney's Answer might be read; wherein, he said, there was matter enough to condemn him: In which he confessed the exhibiting the Paper of Articles, as a Message from his majesty, and by his command; on which it was recorded in the Clerk's Book; put into a course of proceeding; a committee appointed for examination of Witnesses, under a command of secrecy; and a desire to the Lords that their persons might be secured. These were the steps and degrees of his Proceedings; but, in his Answer, he denies the advising and contriving of these Articles; and saith, That he was so far from that, that he knew nothing at all of them, till he received this command from his majesty for the exhibiting of them; being sent for, immediately before, by his majesty for that purpose. But this, he said, was so far from satisfaction to the Commons, or qualification of the offence, that it aggravated and augmented it.

"For the exhibiting and promoting of those Articles, is, in judgment of law, an evident demonstration of his contrivance of them: As, in the case of stolen goods, the receipt and possession of them, is an evidence, to a jury of life and death, of the stealing of them, unless the party can shew how he came by them. In case of Trover and conversion of Goods, though the denial of them, upon demand, be no conversion, in law, whereon to ground an action, upon Not Guilty pleaded; it is a good evidence to a jury to find him Guilty of the conversion. In case of a Libel, the finder and publisher shall be adjudged the author and contriver of it, unless he can produce some other author. So, in this case, the publishing and exhibiting of these Articles, by the Attorney General, is a clear evidence that he contrived them; the

one doth necessarily imply the other. The contriving, without the publishing, is but an inception of an offence; the publishing is the consummation of it, and therefore the more heinous. The publisher is the grand offender; he blows the coals and the trumpet. If it could be imagined that there was another author, or contriver of these, than Mr. Attorney, as he would pretend, yet the exhibiting and promoting of them is an offence so heavy, as needs no other additional weight to press him down to the ground; who, by such an act of injustice and false accusation, would so grievously have oppressed them. Mischiefs, hatched in the brain, are only mischievous to the inventor; but the vegetation and life is from the publisher; he gives motion and agitation to it, which, otherwise, would be but an abortive and inanimate creature.

"But for the Excuse, under which he seeks to shelter himself, that is, the King's Command, this adds more to his offence; a foul aspersion on his majesty, and wrong to his gracious master; for he could not but know that the King's command, in things illegal, is utterly frustrate, and of no effect: his Patents and Grants, if against the crown, in matter of interest, are utterly void, *quia in deceptione regis*; if against the weal-public, they are, *ipso jure, vacua*; much more his command, in matters criminal, because no action lies against him.—The Serjeant, next, proceeded to cite several cases, from the Statute Books, &c. to prove that the Attorney General had broken all those laws, and infringed all those liberties; even the Rights of Parliament, by which no member of either house ought to be impeached, either for felony, treason, or other offences, without representing the cause first to that house whereof he is a member, and their consent and direction therein desired: for, otherwise, all members of each house may be pulled out, one after another, upon a pretence of treason; which, perhaps, he said, was now Mr. Attorney's design. Besides, he said, that the Attorney had done contrary to his oath, in this business; for he is sworn to the king, duly and truly to issue out the king's writs, and give the king true advice according to the law; which, in this action, he hath not done, contrary to his oath.—The Serjeant then said, That many aggravating circumstances might be added; as, the Attorney's profession and knowledge in the law; his long experience in the course and privileges of Parliament, having been so often, and of late, a Member of the House of Commons, and obliged to them by many favours; and now an assistant or attendant in the house of lords: Then considering the qualities of the persons accused; their singular parts, integrity, and merit; their indefatigable labours and travail for the public good, which could not expect such a reward as this, the odious name of traitors: the woful and dangerous consequences that have, *de facto*, ensued upon this; for, by colour of these Articles, they were proclaimed, posted, sold up and down, for traitors; they were hunt-

ed and sought for by officers, demanded even from the horns of the Altar; their studies, chambers, and trunks sealed up; the House of Commons strongly besieged; their privileges strangely invaded; their last and uttermost hopes ready to be confounded. As these are beyond expression, so the consequences that might have happened are beyond imagination; bloodshed, horror, devastation, and confusion; all the evils, dangers, troubles, and distractions which have happened since, and what now the houses lie under, may be imputed to this act of Mr. Attorney. Had he stood in the gap, and humbly besought or advised the forbearance of this, or declined the doing of it, as in all equity he ought to have done, all these miseries had been prevented; and a happy reconciliation, in all likelihood, settled between his majesty and his people before this time. It remains, therefore, that he who, willingly, judicially, and upon record, hath contracted to himself the guilt of all these evils and calamities, should receive, from their lordships, such a measure of punishment as may make the fact more odious, and himself the mark of their exemplary justice to this and after ages."

Mr. Serjeant Wyld having made an end of this Charge, desired, That if Mr. Attorney would make any Answer to it, he might speak himself; but the Attorney desired that his Counsel might be heard for him: To this the Serjeant objected, and said, That they were a Committee representing the House of Commons, and it did not stand with the dignity of that house to have counsel come to confront them. He further alledged, That this Offence of Mr. Attorney's had been voted, by both houses of parliament, an high Breach of the Privileges of Parliament, which no counsel can, neither ought they to judge of. And because it concerned the House of Commons, in an high degree, in their privileges, as well as it did their lordships, he desired that Mr. Attorney might not be allowed counsel, but that he might speak for himself.—The Attorney replied, That their lordships had been pleased, upon his humble Petition, to assign him Counsel in this cause; that his Answer is put in by their advice, and they are ready to maintain it; which if their lordships should not allow of, he was not provided to make a defence to his charge; therefore desired their lordships to hear him by his counsel, and the committee to take the judgment of the house upon it.

Hereupon, both sides being commanded to withdraw, the Lords put themselves into a Committee, for the more free debate in this matter; it being a mixed case, consisting of breach of privilege of parliament, matter of fact, and matter of law. The House being resumed, the question was put, Whether Mr. Attorney should have counsel, in matter of Privilege, in this case? And it was resolved in the affirmative. The Committee of the Commons, the Attorney and his counsel, being called in again; were told of this Resolution; and that their

lordships had appointed to proceed further in this cause the next day.

March 9.

The Lords proceeded in the Attorney General's Cause, and his Counsel, were told, that they were to begin with assisting him in his defence, upon their perils. The counsel craved their lordships pardon therein, for they came not now provided for his Defence; because the business concerned the Privilege of Parliament, as was alleged yesterday. The Lords not being satisfied with this Answer, directed the Attorney and his counsel to withdraw; and, upon consideration of it, it was ordered, "That they should be commanded to give a direct Answer, severally, whether they would plead or not; and if they would not it should be taken as a denial."—Being called in again, the Lord Keeper commanded them to proceed; when sir Thos. Beddingfield, one of the counsel, answered, He desired some time to prepare for it, not being now provided. Sir Thos. Gardiner, recorder of London, another counsel, answered in like manner. The rest of them said, That they were willing to plead now, at their Lordships command, and thought it was their duty so to do; but the chief part of Mr. Attorney's Defence being committed to the aforesaid Gentlemen, by that means they are not provided now, but desired some further time, as their lordships should please to appoint. On this, all being commanded to withdraw again, the Lords considering the refusal of sir Thos. Beddingfield and sir Thos. Gardiner, to plead, as a contempt of that House, ordered them both to be committed to the Tower, there to remain during the pleasure of the house: and further ordered, "That if Mr. Attorney desire other Counsel, in the room of the former, that he bring in the names of such as he desires, the next morning for the better expediting of this cause."

March 10.

The Attorney made his humble Petition to the Lords, That they would assign him Mr. Serjeant Green, and Mr. Serjeant Pheasant, as Counsel in the room of the former two committed; which was granted, and the 12th instant was peremptorily appointed to proceed in that business.

Accordingly, on that day, the Lords ordered the Attorney General and his Counsel to be called in, and proceed in his Defence. Serjeant Pheasant desired to be excused from pleading in a business which required so much pains to attend, by reason of his bodily infirmities; and the other, Serjeant Green, saying, That being assigned so lately to this business, he found it so intricate to be put in a method, and the Records to be perused so many, that he could not, upon so short warning, undertake to make this Defence; he therefore humbly craved their lordships to excuse him then, and allow him some further time to prepare himself for this purpose.

But, upon consideration of this, the Lords

resolved to allow no longer time; on which Mr. Hearne, another of the Attorney's Counsel, desired that the Impeachment might be read which being done, he said: "That for the matter of fact, nothing appears by way of Charge, but the exhibiting of the Articles; and that no Witness was produced, in all the cause, to prove any crime; that there was but an Impeachment and a Denial; and no act prove but what was confessed, which is the exhibiting the Articles. He further alleged, That where as the Attorney was charged to do the fact maliciously, he did nothing but by the command of the king, and knew not of the Articles until they were delivered to him by his majesty."

Next Mr. Chute, another of Mr. Attorney's Counsel, argued, "That it was the duty of the Attorney to prosecute the King's causes in all Courts of Record, when he shall be called, and be assistant in all these matters; to this purpose he read the Attorney's oath. Further he alleged, That the King's 'Datum est nobis intelligi,' is warrant enough to the Attorney to proceed against any person, as in the Record of Ed. 3, rot. 38, where William archbishop of York, upon "Datum est nobis intelligi," was brought before the King and his Council, and prosecuted by the Attorney General. He also urged the Reports of the Judges in the Earl of Arundel's Case, April 1626." He said, "That the Attorney General is bound, by his Oath, to proceed in all Courts of Record, though the king gave him no command; and that in parliament he hath prosecuted a Commoner at large, as 31 Ed. 1, rot. 22, where Nicholas de Segrave was summoned, by the sheriff of Northampton, to appear 'Coram domino rege in proximo parlamento suo apud Westmonasterium primo adventu domini regis, ibidem ad audiendam voluntatem domini regis, super his quæ tunc ibidem proponere intenderet versus eum; et ad faciendum et recipiendum ulterius quod curia domini regis consideraret in premissis.' The said Segrave appearing in parliament, he was prosecuted for the king, and accused by Nicholas de Warwick, That he maliciously stirred up discord and contention against John de Crumbwell, who was employed by the king in the war against the Scots. A day being given to make answer, Segrave submitted and acknowledged his offence; upon this the king desired the advice of the lords, what punishment should be inflicted upon Segrave for such a fact, so fully and expressly confessed; the lords gave this judgment, That, for his fault, he deserved to lose his life; yet the king, out of his special grace and piety, remitted the judgment of life and members; and ordered the said Segrave to find seven good and sufficient men to be bail for him, body for body. Also 4 Edw. 3, Sir Thomas Berkeley and John Maltravers were prosecuted in parliament, for the murder of Edw. 2, and were tried and acquitted by a jury. And 1, rot. 7, No. 17, Rauf de Ferrers was prosecuted in parliament, upon suspicion of treason: So in

the parliament 17 Rd. 2, No. 20, Tho. Talbot, chevalier, was accused in parliament, for conspiring the death of two of the king's uncles."

The Counsel having spoken concerning the matter of fact, Mr. Attorney made his own Defence to that which concerned the matter of Privilege of Parliament; and cited the Case of Philip Courney, 16 Rd. 2, No. 16, and the Case of the earl of Arundel, and his remonstrance made therein, April 19, 2 Caroli. He also insisted, lastly, on the Case of the Earl of Bristol, the same year. And concluded with observing, That he did not conceive any thing urged against him could make up the crime that he is charged with, but only the Vote, passed by both Houses, touching the Breach of the Privileges of Parliament; and so submitted himself to the justice of that house.

Nothing more was done in this Cause at this time. Sir Thomas Beddingfield and sir Thomas Gardiner, on their humble Petition to the Lords, were released from the Tower.

March 15.

The Lords again took the cause of Mr. Attorney into consideration, What Judgment was to be given on the impeachment of the Commons against him? After a long debate, it was put to the question, 1. Whether, upon the whole matter, Mr. Attorney had committed a crime for which he ought to be sentenced by that house? Resolved in the affirmative. 2. Whether for his Offence, he shall lose his place? Resolved negatively. To this last Vote the following lords dissented; earls of Northumberland, Essex, Leicester, Warwick, Holland, Bolingbroke, Stamford; lords, Hastings, Willoughby de Parham, St. John, Spencer, Paget, Grey de Werk, Roberts, 3. Whether the Attorney shall pay a Fine to the king for his offence? Resolved negatively; the same Lords, as above, dissenting. 4. Whether Mr. Attorney shall pay Damages for this offence to the parties that were accused? 5. Whether the Attorney shall be committed to the Tower for this offence? Both these were, also, resolved in the negative; the same Lords still dissenting.

April 23.

A Message was sent to the Commons, to let them know that their Lordships were ready to give Judgment against Mr. Attorney-General, if they would come, with their Speaker, to demand it. Accordingly, the Commons being come up, and the peers in their robes, the Lord Chief Justice of the Common Pleas, in the absence of the Lord Keeper, pronounced Sentence upon him as follows:

"Whereas sir Edward Herbert, knight, his majesty's Attorney General, hath been impeached by the knights, citizens, and burgesses of the House of Commons, for the advising, contriving, and publishing certain false, scandalous, and malicious Articles of High Treason against the lord Kimbolton, one of the members of the house of peers; sir A. Haslerig, D.

Hollis, John Pym, John Hampden, and William Strode, esqrs. being then, and yet Members of the House of Commons; and for causing Articles of High Treason to be entered into the clerk's book of the said house of peers, which was done against the Privileges of Parliament, tending to the subversion of the ancient rights and being of Parliaments, and against the Liberty of the Subject, and contrary to his oath and the laws of this realm: The Lords, having taken the said Charge into due consideration, do find him Guilty of exhibiting the said Articles unto the House of Peers, and causing the same to be entered in the clerk's Book of the said house; intending thereby falsely, unlawfully, and maliciously to deprive the said houses of the said several members: all which doings were, and are, high breaches of the Privileges of Parliament, tending to the subversion of the ancient rights and Being of Parliaments, and contrary to the Liberty of the Subject, and are of great scandal to his majesty and his government, and against the laws of this realm; for which offences this high court doth award and adjudge, 1. That the said sir Edward Herbert, his majesty's Attorney-General, is, by Sentence of this house, disabled, and made incapable of being a Member-assistant, or pleader, in either House of Parliament, and of all offices, saving that of Attorney-General, which he now holds. 2. That Mr. Attorney-General shall be forthwith committed to the prison of the Fleet during the pleasure of this house."

The following is Lord Clarendon's Account of this business: "The king's Declarations, which were now carefully published, gave the parliament some trouble, and made great impression, in sober men, who were moved with the reason, and in rich men, who were startled at the commands in them. But that Clause in the king's Answer to their Declaration presented to him at Newmarket, in which he told them, 'That if they had not been informed of the seditious words used in, and the circumstances of the tumults, and would appoint some way for the examination of them, that he would require some of his learned counsel to attend with such Evidence as might satisfy them,' troubled them much more. For if there were still so much courage left in the king's counsel, that they durst appear to inform against any of those proceedings, which they favoured, they should find men grow more afraid of the law than of them; which would destroy all their designs. Therefore they resolved to proceed with all expedition, and severely against the Attorney General for his trespass and presumption upon their privileges, in the Accusation of the five members, and the lord Kimbolton: of the circumstances of which proceeding, and judgment thereupon, being as extraordinary, and as distant from the rules of justice, at least of practice, as any thing that then happened, it will not be amiss to set down two or three particulars.

"A third act of the 14th day of February 1642, was the carrying up an Impeachment to the lords against the king's Attorney General, 'for maliciously advising and contriving the Articles upon which the lord Kimbolton, Mr. Hollis, Mr. Pym, Mr. Hampden, Mr. Strode, and sir A. Haslerig, had been accused by his majesty of High Treason;' it being not thought security and reparation enough, that the king had waved any further proceeding against them, except they left such a monument of their power, that, upon what occasion or provocation soever, no man should presume to obey the king in the like command: so that the same 14th of February, that was celebrated for the king's condescension to that Act for putting the Bishops out of the house of peers, is famous likewise for those three unparalleled acts of contempt upon the sovereign power; the demand of the sole power over all the Militia of the kingdom; the opening Letters directed to the sacred person of the Queen; and the impeaching the Attorney General, for performing, what he took to be the duty of his place, by his master's command. All which were very ill instances of that application and compliance his majesty had reason to expect, and some men had promised him he should receive.

"Shortly after they had impeached him, and the king had found it necessary to give over any prosecution against the others, his majesty being desirous now he had freed them, that they should free his Attorney, wrote a Letter from Royston, when he was in his way to York, to the Lord Keeper; in which he told him, 'That the Articles, which had been preferred against the Members, were, by himself, delivered to his Attorney General engrossed in paper; and that he had then commanded him to accuse those persons, upon those Articles of High Treason, and other Misdemeanors; and, in his name, to desire a Committee of Lords might be appointed to take the examination of such Witnesses as should be produced, as formerly had been done in cases of like nature, according to the justice of the house. And his majesty did further declare, that his said Attorney did not advise or contrive the said Articles, nor had any thing to do with, or in advising, any breach of Privilege that followed after. And for what he did in obedience to his commands, he conceived he was bound by oath, and the duty of his place, and by the trust reposed in him by his majesty, so to do: and that if he had refused to obey his majesty therein, his majesty would have questioned him for breach of oath, duty, and trust; but now having declared that he found cause wholly to desist from proceeding against the persons accused, he had commanded him to proceed no further therein, nor to produce, nor discover any proof concerning the same.'

"Though this testimony of his majesty's clearly absolved him from the guilt, with which he was charged, yet it rather hastened the

Trial, and sharpened the edge, that was been enough against him; and the day of the being come, when the members of the Commons, who were appointed for the prosecution found that counsel was ready (which had been assigned by the Lords) for the defence of the Attorney General, they professed, 'that they would admit no counsel; that it was beld the dignity of the house of commons to plead against feed'd counsel; that whoever presuming to be of counsel with a person accused by the Commons of England should be taught better to know his duty, and should have cause to repent it.' The Lords seemed much move with this reproach, that their acts of judicature should be questioned, and the counsel, which had been justly, and regularly assigned by them, should be threatened for submitting to their order. But that which troubled them most was, that the Counsel, which was assigned by them, upon this reprehension, and threat of the Commons, positively refused to meddle further in the business, or to make any Defence for the Attorney. Hereupon, they put off the Trial, and commit to the Tower of London sir Thomas Bedingfield, and sir Thomas Gardner, for their contempt in refusing to be of Counsel with the Attorney upon their assignment: standers by looking upon the justice of parliament with less reverence, to see the subject, between the contradictory, and opposite commands of both houses (the displeasure of either being insupportable) punished and imprisoned for doing, by one, what he was streightly inhibited from doing by the other.

"However, this difference gave only respite for some days to the Attorney, who was quickly again called before his Judges. To what was passionately and unreasonably objected against him, 'of breach of privilege and scandal,' he confidently alledged 'the duty of his place; that his master's command was warrant for what he had done; and that he had been justly punishable if he had refused to do it, when commanded: that there had never been a pretence of privilege in case of treason, the contrary whereof was not only understood by the law, but had been by themselves confessed, in a petition delivered by them in the beginning of this king's reign, upon the imprisonment of the earl of Arundel; in which it was acknowledged, that the privileges of parliament extended not to treason, felony or refusal to find sureties for the peace; that he had no reason to suspect the executing the duty of his place would have been imputed to him for any trespass, since the very same thing he had now done and of which he stood accused, was done in the first year of this king's reign, by sir Robert Heath, the then Attorney General; who exhibited Articles of High Treason before their lordships, against the earl of Bristol, which was not then understood to be any breach of privilege; and therefore, having so late a precedent, most of their lordships being then Judges, he hoped he should be held excusable for not being able to dis-

cern that to be a crime, which they had yet never declared to be so.' The undeniable reasons of his Defence (against which nothing was replied, 'but the inconvenience and mischiefs, which would attend a parliament, if the members might be accused of high treason without their consent') prevailed so far with the major part of the House of Peers, though the prosecution was carried on with all imaginable sharpness, and vehemence, by the House of Commons, and entertained by those peers, who were of that party, as a matter of vast concernment to all their hopes, that the Questions being put, whether he should be deprived of his place of Attorney? whether he should be fined to the king? whether he should pay damages to the persons accused? and whether he should be committed to the Tower? which were the several parts of the Sentence, which many of the Lords had pressed he should undergo, the Negative prevailed in every one of the particulars; so that the Attorney was understood by all men who understood the rules and practice of parliament, to be absolutely absolved from that Charge and Impeachment, by the Judgment of the House of Peers.

"The House of Commons expressed all possible resentment, and declared 'that they would not rest satisfied with the Judgment;' and some Lords, even of those who had acquitted him, were very desirous to find out an expedient, whereby the House of Commons might be

compounded with; and it was believed, that the Attorney himself was much shaken with the torrent of malice and prejudice, which the House of Commons seemed now to threaten him with; conceiving, that he and his office now triumphed over the whole body, and not over six Members only: and therefore, after some days, the House of Peers considering, "that his discharge was but negative, that he should not be punished in this and that degree; and that he had no absolution from the crimes, with which he was charged," proceeded to a new judgment (contrary to all course and practice of parliament, or any other judicial court) and complying with all their other votes, resolved by way of judgment upon him, "that he should be disabled from ever being a parliament man; incapable of any place of judicature, or other preferment, than of Attorney General; which they could not deprive him of, by reason of the former Vote: and "that he should be committed to the prison of the Fleet." Which Sentence was with all formality pronounced against him, and he committed to the Fleet accordingly: with which sentence the Commons were no more satisfied than with the former; some of them looking that their favourite, the Solicitor, should have the place of Attorney; others, that the accused Members should receive ample damages by way of reparation; without which they could not think themselves secure from the like attempts."

## 162. Impeachment of GEORGE Lord DIGBY,\* eldest Son of the Earl of BRISTOL, for High Treason: 17 CHARLES I. A. D. 1642. [4 Rushw. Coll. 554. 2 Cobb. Parl. Hist. 1103.]

IN the month of February, 1642, a packet of Letters from lord Digby being intercepted, directed to secretary Nicholas, was ordered to be opened; but one of them being directed to

the Queen, the Lords disputed the opening of it, and sent to know the opinion of the Commons about it. They returned for Answer, That they had voted it should be opened; on

\* "The lord Digby," says Clarendon, "was a man of very extraordinary parts by nature and art, and had surely as good and excellent an education as any man of that age in any country: a graceful and beautiful person; of great eloquence and becomingness in his discourse (save that sometimes he seemed a little affected) and of so universal a knowledge, that he never wanted subject for a discourse: He was equal to a very good part in the greatest affairs, but the unfittest man alive to conduct them, having an ambition, and vanity superior to all his other parts, and a confidence in himself, which sometimes intoxicated, and transported, and exposed him. He had from his youth, by the disobligations his family had undergone from the duke of Buckingham, and the great men who succeeded him, and some sharp reprehension himself had met with, which obliged him to a country life, contracted a prejudice and ill will to the court; and so had in the beginning of the parliament, engaged him-

self with that party which discovered most aversion from it, with a passion and animosity equal to theirs, and therefore very acceptable to them. But when he was weary of their violent counsels, and withdrew himself from them with some circumstances which enough provoked them, and made a reconciliation, and mutual confidence in each other for the future, manifestly impossible amongst them; he made private and secret offers of his service to the king, to whom in so general a defection of his servants, it could not but be very agreeable; and so his majesty being satisfied both in the discoveries he made of what had passed, and in his professions for the future, removed him from the house of commons, where he had rendered himself marvellously ungracious, and called him by writ to the house of peers, where he did visibly advance the king's service, and quickly rendered himself grateful to all those who had not thought too well of him before, when he deserved less; and men were not

which the Lords, conceiving this affair to be a thing of great consequence, desired a Conference; the Report of which was, "That the Commons said, they saw no reason to alter their Vote; 1. Because it concerned the safety of the kingdom; for, by this means, the evil spirit and counsels of the lord Digby might be discovered and prevented. 2. If this Letter be delivered to the Queen unopened, the Parliament will be put to a deal of trouble to discover what is presented to her majesty in these letters. 3. Since, of late, they had very good reason to suspect the lord Digby as an ill instrument, they conceive they ought not to lose so happy an occasion offered to do the state service; which, if neglected, they shall not be able to answer."

On this, a great debate arose in the Lords, but at last, it was ordered, That the Letters should be opened.

February 15.

Mr. Glynn reported to the Commons, the Resolutions of a Committee, appointed to consider how Evil Counsellors might be found out and removed from the King, as follows: "1. That all Privy-Counsellors and Great Officers of State may be removed for the present, excepting such as have offices by inheritance. 2. That his majesty shall be humbly desired that he will be pleased to receive only such, to be Counsellors and Great Officers of State, as shall be recommended unto him by the humble advice of both houses of parliament. 3. That such of the said Counsellors and Great Officers, whose names shall be presented by both houses, shall not have access to the persons or courts of the king and queen's majesty. 4. That Mr.

only pleased with the assistance he gave upon all debates, by his judgment and vivacity, but looked upon him, as one who could derive the king's pleasure to them, and make a lively representation of their good demeanor to the king, which he was very luxuriant in promising to do, and officious enough in doing as much as was just."

He had been member in this parliament for the county of Dorset, but having given great offence to the commons by his conduct respecting the earl of Strafford, and particularly by the celebrated Speech which he made against that measure, he was shortly afterwards called up to the house of peers by writ, in the lifetime of his father. It has been said, that he was expelled the house of commons the same day, see 2 Cobb. Parl. Hist. 749, 822. For other particulars, see Clarendon's Hist. of the Rebellion, vol. 2, p. 359, 360, 383, 384, 704, et seq. Of this Impeachment lord Clarendon says, "It may be, posterity may look upon the severe prosecution of a young nobleman of admirable parts, and eminent hopes, in so implacable a manner, as a most pertinent instance of the tyranny, and injustice of that time, not possible to end, but in so much wickedness as hath since been practised."

Wm. Murray, of the bed-chamber, is thought fit to be removed from the persons and courts of the king and queen, as one that is conceived to give dangerous counsel." In like manner Mr. Porter, the lord Digby, Mr. Wm. Crofts and sir John Winter, Secretary to the Queen were excepted against.

February 17.

A Message came from the King, this day, to the Lords, which was read in these words:

"His majesty, at the earnest desire of his consort, the Queen, hath thought fit to acquaint the Parliament, that she understanding a Letter, addressed to herself, had been opened by them, and remains in their custody, desired that a transcript of it might be speedily sent her; and declares, That if the Parliament should desire to be further satisfied from her, of any particulars mentioned in that Letter, or any circumstances concerning the same, so far forth as may any ways relate unto or reflect upon her person, or any whatsoever concerning her, she is ready and very willing to give them due satisfaction therein."

A copy of this Message was dispatched to the Commons; but, that not contenting that house, they desired to see the original Message, which was sent them.

February 19.

The Commons sent up Mr. Pym, with an Answer to the King's last Message about the lord Digby's Letters, with the copies of them, and desired their lordships concurrence in it: it was to this effect:

"Most Gracious Sovereign; Your majesty's most loyal and faithful subjects, the Lords and Commons in Parliament, have received your Message of the 17th instant, sent at the instance of the Queen; and, upon consideration thereof, we find, to our great joy and content, clear expressions of grace and favour from both your majesties, for which we return you our most humble thanks; and have herewithal sent the transcript of that Letter required by your majesty, as, likewise, of two other Letters directed to Mr. Secretary Nicholas and sir Lewis Dives; all which were brought to us, under one cover, directed to Mr. Secretary, with information that they were written by the lord Digby; who being a person fled from the justice of Parliament, and one who had given many evidences of his disaffection to it, we conceived it necessary to open the two latter; and finding sundry expressions in them full of asperity and malignity to the Parliament, we thought it very probable the like might be contained in the Letter to her majesty; and that it would be dishonourable for her and dangerous to the kingdom if it should not be opened; wherein we were no wit deceived, as your majesty may well perceive by the contents of it. And although we cannot but be very sensible of the great dishonour therein done to your majesties, and the malicious endeavours of fomenting and increasing the jealousies betwixt your majesty and your people; yet we are far from reflecting any

thing on the Queen, or expecting any satisfaction from her majesty, but impute all to the bold and envenomed spirit of the man. Only we most earnestly beseech your majesty to persuade the Queen, That she will not vouchsafe any countenance to, or correspondence with, the lord Digby, or any other of the fugitives or traitors; whose offences now depend under the Examination and Judgment of Parliament; which we assure ourselves, will be very effectual to further the removal of all jealousies and discontents betwixt your majesty and your people, and the settling of the great affairs of your majesty and the kingdom in an assured state and condition of honour, safety, and prosperity."

The Lords agreed to this Message, and ordered it to be presented to the King.

The LETTER from the Lord DIGBY to the QUEEN herein mentioned, was as followeth:

"Madam; I shall not adventure to write unto your majesty with freedom but by express, till such time that I have a cypher, which I beseech your majesty to vouchsafe me. At this time therefore I shall only let your majesty know, where the humblest and most faithful servant you have in the world is here at Middleborough, where I shall remain in the privatest way I can, till I receive instruction how to serve the king and your majesty in these parts, if the king betake himself to a safe place, where he may avow and protect his servants from rage (I mean) and violence (for from justice I will never implore it) I shall then live in impatience and in misery till I wait upon you: But if after all he hath done of late, he shall betake himself to the easiest and compliantest ways of accommodation, I am confident that then I shall serve him more by my absence than by all my industry; and it will be a comfort to me in all calamities, if I cannot serve you by my actions, that I may do it in some kind by my sufferings for your sake, having, I protest to God, no measure of happiness or misfortune in this world, but what I derive from your majesty's value of my affection and fidelity.—Middleborough, Jan. 21, 1641."

Lord Digby's LETTER to Sir Lewis Dives.

"Dear brother; I hope you will have received the letter which I wrote unto you from aboard sir John Pennington, wherein I gave you account of the accident of O'Neal's man, and why I thought fitting to continue my journey into Holland; going still upon this ground, that if things go on by way of accommodation, by my absence the king will be advantaged. If the king declare himself and retire to a safe place, I shall be able to wait upon him from hence, as well as out of any part of England, over and above the service I may do him here in the mean time. Besides that, I found all the ports so strict, that if I had not taken this opportunity of sir John

Pennington's forwardness in the king's service, it would have been impossible for me to have gotten away at any other time.—I am now here at Middleborough, at the Golden Fleece upon the Market, at one George Peterson's house, where I will remain till I receive from you advertisement of the state of things, and likewise instructions from their majesties, which I desire you to hasten unto me by some safe hand, and withal to send unto me a cypher, whereby we may write unto one another surely. If you knew how easy a passage it were, you would offer the king to come over for some few days yourself; God knows I have not a thought towards my country to make me blush, much less criminal, but where traitors have so great a sway, the honestest thoughts may prove most treasonable. Let Dick Shirley be dispatched hither speedily with such black cloaths and linen as I have, and let your letters be directed to the baron of Sherburn, for by that name I live unknown, let care be taken for bills of exchange. Yours, &c.

"Middleborough, Jan. 20, 1641."

February 22.

The Commons sent up an Impeachment of High Treason against George lord Digby, desiring their lordships to prefix some short time for him to come and appear, before which time the Commons would be ready to come up to make good their charge against him. Upon this the Lords ordered out a Proclamation, through England and Wales, for the lord Digby to appear and answer to this charge, within 15 days after date, on pain of conviction.

February 26.

The Commons, at a Conference this day, exhibited the following Articles against lord Digby, which were sent up by sir John Evelyn:

ARTICLES OF IMPEACHMENT against GEORGE Lord DIGBY, by the Commons in this present Parliament assembled, in maintenance of their Accusation, whereby he standeth charged with High Treason, in their name, and in the names of all the Commons of England.

I. That the said George lord Digby, in or about the month of January, 1641, maliciously and traiterously endeavoured to persuade the king's majesty to levy Forces against his majesty's liege subjects within this kingdom; and the said George lord Digby did, in or about the same month, actually levy forces within the realm, to the terror of his majesty's subjects.

II. That the said George lord Digby, in and about the said month of January, and at other times, falsely, maliciously, and traiterously, laboured to raise a jealousy and dissension between the king and his people, and to possess his majesty that he could not live with safety of his person amongst them; and did thereupon traiterously endeavour to persuade his majesty to betake himself to some place of strength for his defence.

III. That the said George lord Digby, in or about the same month of January, and at other times, did maliciously and traiterously endeavour to stir up jealousies and dissensions between the king and his parliament; and, to that end and purpose, did, the same month of January, wickedly advise the framing of certain false and scandalous Articles of High Treason, against the lord Kimbolton, Denzil Hollis, esq. sir Arthur Haslerig, bart. John Hampden, John Pym, and William Strode, esquires, and did persuade his majesty, accompanied with divers soldiers and others, in warlike manner, to come in person into the house of commons sitting in parliament, to demand the said members of the said house, to the apparent endangering of his majesty's person, and the high violation of the privileges and being of parliaments.—All which matters were done by the said George lord Digby, traiterously and wickedly to alienate the hearts of his majesty's liege people from his majesty, and set division between them, and stir up war within this kingdom.—For which the said Commons do impeach him the said George lord Digby of High Treason; and the said commons, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any other Accusation or Impeachment against the said George lord Digby, and also of replying to the Answer which he shall make to the said Articles, or any of them, or of offering proof of the premises, or any of them, or of any other impeachment or accusation that shall be exhibited by them, as the case shall, according to the course of parliament, require; do pray that the said George lord Digby\* may be put to answer all and every the premises, in the presence of the commons; and that such proceedings, examinations, trial, judgments, and executions, may be upon every of them had and used, as is agreeable to law and justice.

In support of this Accusation,

Sir John Evelyn said, That this is a heavy Accusation, and such a one as needs no aggravation, but pity, that a noble gentleman, as he was, should fall into so foul a crime, as to study the destruction of his country. In the House of

\* "This nobleman was the eldest son of John, earl of Bristol, and was born at Madrid in 1612, during his father's first embassy into Spain. He was entered of Magdalen college, Oxford, in 1626, and lived in great familiarity with the well-known Peter Heylin, a fellow of that house. He soon became distinguished by his remarkable advancement in all kinds of literature, and was created master of arts in 1636. In the beginning of the long parliament he was disaffected to the court; in a short time afterwards, he appeared as a declared enemy to the parliament, and having testified his dislike of their proceedings against lord Strafford, he was expelled the house of commons in June 1641. In the following year he went on a message from Charles the first to certain gentlemen at Kings-

Commons, they observed him to appear much for his country till he had dived into the secrets of that house; and then he quickly fell into ill discourses and bitter railings against that house; as in a Speech of his touching the earl of Strafford, wherein the Commons, your lordships, and the king, were involved in murder: Being questioned for it, he fled from that house, and came to yours, where we found him in the same way; there he said, This was no free parliament: Not long after, followed that high breach of parliament, in which time he was observed to be a diligent attendant on the courts of the king and queen: After that Plot discovered, and the king retired to Hampton Court, there we found him tampering with the Soldiers, saying, The king went out of town but to save them from being trampled in the dirt; and, by offering all strong obligations to the soldiers for doing the worst service that ever was done to a king, *scelere tegendum scelus*.—After this, he endeavoured to list men; getting names, offering himself and all he could for that purpose;

ton, with a coach and six horses, which was construed into a warlike appearance. On this occasion he drew up "The Lord George Digbie's Apologie for Himselfe. Printed at Oxford, and published the fourth of January, A. D. 1642:" a quarto tract; written with ingenious plainness and apparent veracity; and he was accused of high treason by the parliament, upon pretence of levying war at Kingston upon Thames. Lord Clarendon mentions this prosecution, as a pertinent instance of the tyranny and injustice of those times. Finding what umbrage he had given to the parliament, he obtained leave to transport himself into Holland. In a secret expedition afterwards to the king, he was taken by one of the parliament's ships, and carried into Hull, but by artful management of the governor, brought himself off. In 1643 he was made one of the secretaries of state and high steward of the university of Oxford. In 1645 he was constituted lieutenant-general of the king's forces north of Trent; he afterwards went over to Ireland, and exposed himself to many hazards in the royal cause. Upon the death of the king, he was exempted from pardon by the parliament, and obliged to live in exile, till the restoration of Charles the second, when he recovered all he had lost, and was made a knight of the garter; after which he grew very active in public affairs, spoke frequently in parliament, and made himself conspicuous for his enmity to lord Clarendon while he was chancellor; though the earl of Bristol's history and character have been drawn at considerable length in the Clarendon State Papers, with every appearance of impartiality, and with consummate skillfulness. After a life, says the Biog. Dram. which at different periods commanded the respect and the contempt of mankind, lord Bristol died, neither loved nor regretted by any party, in 1676." See Walpole's Noble Authors, Park's edition, vol. 3, p. 193.

the particulars whereof they will make by proof to appeare unto your lordships.—That nobleness and honour, that hath prompted your lordships so long to stand in the gap for the good of the state, will easily suggest what he deserveth that would destroy it. He that will not omit to lay

jealousies between king and people, deserveth ill: But he that will fester them, and nourish them, the state will spew him out; they cannot digest him.—He concluded, they would by Proof shortly make good the Articles now exhibited to your lordships.

163. Impeachment of Mr. GEORGE BENYON, Citizen of London, for contriving a Petition against the Ordinance for the Militia :\* 18 CHARLES I. A. D. 1642. [Journals of both Houses. 2 Cobb. Parl. Hist. 1149.]

March 31, 1642.

AT a Conference, the Commons exhibited to the Lords the following Articles of Impeachment against George Benyon, citizen of London, for several High Crimes and Misdemeanors:

“ARTICLES OF IMPEACHMENT of GEORGE BENYON, of London, Silkman, by the Commons assembled in Parliament, on the behalf of themselves and of all the Commons of England, of High Crimes and Misdemeanors by him committed, as followeth:

“Whereas, upon due and serious consideration of the imminent dangers and present dis-

\* Lord Clarendon gives the following account, of the passing of this Ordinance:

“The same day [Feb. 14, 1641-2] on which those two Acts (that for taking away the Votes of Bishops in the House of Lords, or, as it was called, for taking away all Temporal Jurisdiction, from those in Holy Orders, and that about Pressing, as to which latter see 2 Clar. Hist. 326) were by his majesty's Commission passed, and as soon as a very short Message of Thanks for that favour, as much importing the safety of both kingdoms, of England and Ireland, was consented to, an Ordinance for the settling the Militia was agreed on by both houses, and, together with a List of the names of such persons, as for the present they meant to confide in, was immediately sent to the king for his approbation: the which, being the most avowed foundation of all the miseries that have followed, will be here necessary to be inserted in the very terms and form it was agreed upon, and presented; and was as followeth:

“An Ordinance of both Houses of Parliament for the ordering of the Militia of the Kingdom of England, and Dominion of Wales.

“Whereas there hath been of late a most dangerous and desperate design upon the House of Commons, which we have just cause to believe to be the effect of the bloody Counsels of the Papists, and other ill affected persons, who have already raised a Rebellion in the kingdom of Ireland, and, by reason of many discourses, we cannot but fear they will proceed, not only to stir up the like rebellion, and insurrection in this

tractions of this kingdom, by means of the Rebellion in Ireland, and of divers hostile preparations and malicious practices both of foreign and domestic enemies, against the peace and safety of this kingdom; an Ordinance of Parliament was thought fit, and agreed upon by both houses of parliament, to be presented to his majesty, for his royal assent thereunto, for the speedy settling of the Militia of this kingdom in safe hands, and particularly that of the city of London (being of so high importance) in the hands of such persons as were agreed upon by the lord mayor, aldermen, and common council of the same city, by and with the approbation of both houses of parliament; the

kingdom of England, but also to back them with forces from abroad; for the safety thereof of his majesty's person, the parliament, and kingdom, in this time of imminent danger, It is ordained by the king, the lords, and commons, now in parliament assembled, That shall have power to assemble, and call together all and singular his majesty's subjects within the county of as well within liberties, as without, that are meet and fit for the wars, and them to train, exercise, and put in readiness, and them, after their abilities, and faculties, well and sufficiently, from time to time, to cause to be arrayed, and weaponed, and to take the muster of them in places most fit for that purpose. And shall have power within the said county to nominate and appoint such persons of quality, as to him shall seem meet, to be his deputy lieutenants to be approved of by both houses of parliament: and that any one, or more of the said deputies, so assigned and approved of, shall in the absence, or by the command of the said have power and authority to do and execute within the county of all such powers and authorities before in this present ordinance contained; and shall have power to make colonels, and captains, and other officers, and to remove out of their places, and to make others from time to time, as he shall think fit for that purpose. And his deputies, colonels, and captains, and other officers, shall have further power and authority to lead, conduct and imploy, the persons aforesaid arrayed, and weaponed, as well within the county of

said George Benyon, well knowing the premises, and being a man of power and credit in the said city, to the intent to cross and hinder the said Ordinance, and to set division between his majesty and the parliament, and between the parliament and the said city, in or about the month of February, 1641, did wickedly and maliciously contrive and frame a false, dangerous, and seditious Petition, for and on the behalf of himself and divers other citizens (which Petition is hereunto annexed); a copy whereof was afterwards, by himself and others; by his instigation, presented to both houses of parliament, containing therein divers false and

seditious matters, particularly that the ordering of the arms of the said city of London had time out of mind been annexed to the mayoralty for the time being, and insinuating that, if the same should be conferred upon others, it would reflect upon the government and customs of the said city, which every freeman of the said city was, by his oath of freedom, bound to maintain, to the utmost of his power; and the said Benyon by false and sinister persuasions, solicitations, and practices, procured divers citizens to subscribe their hands to the said Petition, contrary to their intent and true meaning, being thereunto misled and seduced

‘as within any other part of this realm of England, or dominion of Wales, for the suppressing of all rebellions, insurrections, and invasions, that may happen, according as they, from time to time, shall receive directions by his majesty’s authority, signified unto them by the lords and commons, assembled in parliament. And it is further ordained, that such as shall not obey in any of the premises, shall answer their neglect and contempt to the lords and commons, in a parliamentary way, and not otherwise, nor elsewhere: and that every the powers, granted as aforesaid, shall continue, until it shall be otherwise ordered, or declared by both houses of parliament, and no longer. This to go also to the dominion of Wales.’”

And in another place, he thus describes the conduct of the Parliament towards the Petitioners against this Ordinance, and towards other persons who expressed dissatisfaction with any of their proceedings. “In this particular, in oppressing all those who were of different opinions from them, their carriage was so notorious and terrible, that spies were set upon, and inquiries made upon all private, light, casual discourses, which fell from those who were not gracious to them: As Mr. Trelawny, a member of the house of commons, and a merchant of great reputation, was expelled the house, and committed to prison, for having said, in a private discourse in the city, to a friend, “that the house could not appoint a guard for themselves without the king’s consent, under pain of High Treason.” Which was proved by a fellow, who pretended to overhear him; when the person himself, with whom the conference was held, declared, ‘that he said, it might be imputed to them for High Treason:’ and it was confessed on all parts, that the words were spoken long before the discovery, and some days before the house had resolved, ‘That they would have a guard.’ And afterwards, upon the old stock of their dislike, when the war begun to break out, they again imprisoned this honest gentleman: seized upon all his estate, which was very good; and suffered him to die in prison for want of ordinary relief and refreshment.

“And in this very time, we speak of, and in the very business of the Militia, when every day very great multitudes of Petitions from

most of the counties of England, and from the city of London, were presented to both houses, to desire they might be put into a posture of defence; and that they would cause the Ordinance for the Militia to be speedily executed, which was alledged to be an instance of the people’s desire throughout the kingdom, and the chief ground of their proceeding; the most substantial citizens of London both in reputation, and estate, finding that the Militia of that city, with which by their Charter, and constant practice, the lord mayor had been always intrusted, was now with a most extravagant power to be committed to a number of factious persons of the city, part of whom consisted of men of no fortune, or reputation, resolved to petition both houses ‘not to alter the original constitution, and right of their city:’ and, to that purpose, a Petition was signed by some hundreds, and very probably would in few days have been subscribed by all, or most of the substantial citizens of London. The House had notice of this Petition, which they called another Conspiracy and Plot against the Parliament, and immediately employed a Member of their own to procure a sight of it; who, under a trust of re-delivering it, got it into his hands, and brought it the house of commons; upon which, some principal citizens, who had subscribed it, were examined, and committed to prison; and a direction given, that a Charge and Impeachment should be prepared against the Recorder of London, who, they heard, had been of council in the drawing up, and preparing that Petition, and, they knew, was opposite to their tumultuary proceedings. So when the chief gentlemen of Oxfordshire heard, that a Petition had been delivered to the House of Commons in their name, and the name of that county, against the established government of the Church, and for the exercise of the Militia, they assembled together to draw up a Petition disavowing the former, and to desire, ‘that the settled laws might be observed:’ of which the lord Say having notice, he procured the chief gentlemen to be sent for as Delinquents, and so suppressed that Address: And this was the measure of their justice in many other particulars of the same nature, receiving and cherishing all mutinous, and seditious petitions, and discountenancing such as besought the continuance, and vindication, of the so long celebrated

by the said Benyon: which Petition was so contrived, framed, and published, by the said Benyon, on purpose to divert his majesty from assenting to the said Ordinance, and to work a distraction in the said city, and to bring the parliament, city, and whole kingdom, into disorder and confusion.

“That the said George Benyon, out of a malignant and wicked disposition, to scandalize the parliament, and to interrupt the proceedings thereof, in or about the month of August last past, upon and at several other times, did falsely and maliciously give out and utter divers bold, arrogant, false and scandalous

and happy government in church and state; the prime leaders of that faction not blushing, in public debates in the house, to aver ‘that no man ought to petition for the government established by law, because he had already his wish; but they that desired an alteration, could not otherwise have their desires known; and therefore were to be countenanced.’

“Upon the Petition, that was framed in London against their settling the Militia, they committed one George Benyon, a citizen of great reputation for wealth and wisdom, and who was indeed a very sober man. After he had lain some time in prison, the Lords, according to law, bailed him; but the Commons caused him the next day to be recommitted, and preferred an Impeachment against him, for no other crime but ‘advising and contriving that Petition.’ The gentleman defended himself, ‘that it was always held, and so publicly declared this parliament to be lawful, in a modest way, to petition for the removal, or prevention of any grievance: that observing very many petitions to be delivered, and received, for the settling the Militia, in another way than was then agreeable to the law, or had been practised, and conceiving that the same would prove very prejudicial to the city of London, of which he was a member, he had joined with many other citizens, of known ability and integrity, in a Petition against so great an inconvenience; which he presumed, was lawful for him to do.’ How reasonable soever this defence was, the House of Peers adjudged him ‘to be disfranchised, and incapable of any office in the city; to be committed to the common gaol of Colchester,’ for his reputation was so great in London that they would not trust him in a city prison, and fined him 3,000*l*.

“About the same time, at the general assizes in Kent, the Justices of Peace, and principal gentlemen of that county, prepared a Petition to be presented to the two houses, with a desire, ‘That the Militia might not be otherwise exercised in that county, than the known law permitted; and that the Book of Common Prayer, established by law, might be observed.’ This Petition was communicated by many to their friends, and copies thereof sent abroad, before the subscription was ready; whereupon the House of Peers took notice of

Speeches, in derogation and contempt of the privileges of Parliament, and of the Peers therein assembled, and particularly that the Privileges of Parliament were become the greatest Grievance of the kingdom; and that he had the power of the Chamber of London in his hands; and, if the Bill of Protections (which bill was then depending in parliament) did not pass, he had made that stop in the Chamber of London, that there should not be one penny lent to the parliament out of the said city; and swore by God, He would have the said Bill pass, and would not leave a groat in the Chamber of London, but he would have the

of it, as tending to some commotion in Kent; and, in the debate, the earl of Bristol taking notice, ‘that he had seen a copy of it, and had had some conference about it with Judge Mallet,’ who was then Judge of assize in Kent, and newly returned out of his circuit, both the Earl and Judge, for having but seen the petition, were presently committed to the Tower: and a Declaration published, ‘that none should presume to deliver that, or the like Petition to either house.’ Notwithstanding which, some gentlemen of Kent, with a great number of the substantial inhabitants of that county, came to the city; which, upon the alarm, was put in arms; strong guards placed at London Bridge, where the petitioners were disarmed, and only some few suffered to pass with their Petition to Westminster; the rest forced to return to their county. And, upon the delivery thereof to the House of Commons (though the same was very modest, and in a more dutiful dialect than most Petitions delivered to them) the bringers of the Petition were sharply reprehended; two or three of them committed to several prisons; the principal gentlemen of the county, who had subscribed and advised it, sent for as Delinquents; Charges, and Articles of Impeachment, drawn up against them; and a Declaration published, ‘That whosoever should henceforth advise, or contrive the like Petitions, should be proceeded against, as enemies to the common-wealth.’ So unlike, and different were their tempers and reception of those modest Addresses, which were for duty and obedience to the laws established; and those which pressed, and brought on alteration and innovation. But that injustice gave great life, and encouragement to their own proselytes; and taught others to know that their being innocent would not be long easy or safe: and this kind of justice extended itself in the same measure to their own members who opposed their irregular determinations; who, besides the agony and vexation of having the most plain reason, and confessed law, rejected, and overruled with contempt and noise, were liable to all the personal reproaches and discountenance, that the pride and petulancy of the other party could lay upon them; and were sometimes imprisoned and disgraced, for freely speaking their opinions, and conscience in debate.”

privileges of the lords down, and make them honest, and would make the peers of this realm as subject and liable to arrest, as the noblemen of France, Spain, Poland, and other foreign countries; and said, he had computed the lords Debts, and that they owed more than would drive the great trade of the kingdom; and further said, Now we shall see, when the Clothiers come up in a multitude, what the Lords will do; for, said he, If the multitude had not come, Strafford had not lost his head, meaning thereby the earl of Strafford, lately executed for High Treason: And the said George Benyon, in a further manifestation of his hatred and disaffection towards the Parliament, and to stir up the like hatred in others, in or about the month of July last past, he the said Benyon, speaking of the parliament, did falsely and maliciously utter these false and scandalous words touching the same; viz. 'That they much complained of the king's arbitrary power; and yet they go about an arbitrary government themselves, which, being 400, will be more grievous than the other.'

"All which matters and things were committed and done, by the said George Benyon, wittingly and maliciously, contrary to the rights and privileges of Parliament, and to the laws of this realm, to the evil example of others, and to the great danger of the said city and kingdom: And the said Commons, saving to themselves the liberty of exhibiting any other Accusation or Impeachment against the said George Benyon, and also of replying to the Answer that he shall make to the said Articles, or any of them, or of offering proof of the premises, or of any of them, or of any other Accusation or Impeachment that shall be exhibited, as the case, according to the course of parliament, shall require; do pray, that the said George Benyon may be put to answer the said several crimes and misdemeanors, and to receive such condign punishment as the same shall deserve, and that such proceedings upon them, and every of them, may be had against him, as is agreeable to law and justice."

The PETITION was as follows:

• To the Right Honourable the Lords and Commons, now in Parliament assembled.  
 'The humble PETITION of the Citizens of London whose names are underwritten,  
 'Sheweth; That the City of London hath, time out of mind, enjoyed the ordering of their own Arms, which hath successively been annexed unto the mayoralty for the time being;  
 'the Lord Mayor having always been a person of worth and quality, and of their own choice, and hath still advised with the court of Aldermen in the execution thereof; so that, if the same should be conferred upon others, we humbly conceive it would not only be a personal dishonour to the Lord Mayor, but also reflect upon the government and customs of the city of London, granted to the citizens by the Great Charter of England, and confirmed by divers acts and charters since that

time, and which every freeman of the said city is, by the oath of his freedom, bound to maintain, to the uttermost of his power.—This honourable assembly may be pleased to take into their grave consideration, that alteration in the ancient government in this renowned city may breed greater distractions and inconveniencies than for the present can be discerned, or in the future can be amended.—Wherefore our humble desire is, That, since the government hath by experience been found for the honour of his majesty, the good of this city and whole kingdom, and that in the most troublesome times, as that it hath been admired and commended by strangers, before any other city in the known world; that the same, by your honourable favour, may be continued as in former times, without alteration:  
 'And they shall pray, &c.'

The Articles being read; it was observed, and offered to their lordships consideration, "Of what a condition and spirit this Benyon was, and how fit a person to act such a mischief: that he is a man of a turbulent spirit and unruly tongue, a citizen and freeman of the city of London, which is the metropolis and epitome of the kingdom, the strength whereof is in the government of the common council.

"That this Plot was like another Trojan horse, full of variety of mischiefs, and pestilential designs of discord, according to Machiavell's rule 'Divide et impera'; to divide between the king and his people, the parliament and the city, and the city between itself; like a worm gnawing between the bark and the tree.

"The circumstances and gradations of this Offence ascend to a great height; as having reference to the common council, whereto he ought to have submitted, being involved in the votes; but he abounds in his own sense, and spurns against it. 2. It hath reference to the annihilating and opposing the Ordinance of both houses of parliament for settling the Militia, the parliament having power of declaring what the law is concerning itself; and also it lays a great charge on both houses, for arbitrary power, ambition, and injustice, and hath scandalized their members and privileges. 3. Concerning the time when Benyon committed these offences; it was when the kingdom was full of fears, dangers, and distractions; and, taking advantage of this opportunity, he endeavoured to put all into confusion; so as the bark was not to be saved, but by casting anchor, and standing together, and opposing these mischiefs.

"He did not only act his part himself, but persuaded others, both at the Exchange and at the scrivener's shop, to subscribe the Petition, which was a thing contrary to the opinion of the Common Council, as being a matter of great presumption, and tending to sedition; for, it is feared, the consequence of this example will be an occasion to other places to follow the same steps, whereof some passages have

already appeared—The House of Commons desires, for these Offences, that exemplary punishment may be inflicted upon the said George Benyon, according to justice."

This Report being made of the Charge, it was ordered, "That the said George Benyon should be brought to the bar to hear it read;" which being done, and he asked what Answer he would make to it, he humbly desired he might have time given him to put in his Answer; and, for the enabling him thereto, he desired to have counsel allowed him, and to have a copy of his Charge. All which was granted, and the 4th of April was appointed for his Trial.

April 4.

Mr. Benyon delivered in his Answer to the Impeachment of the Commons, importing, his denial of having preferred the Petition there mentioned, with any intent to cross or hinder the Ordinance of Parliament concerning the City Militia; or much less to set division between the parliament and the city, &c. He owned, That he and one Gardiner, merchant, did draw the said Petition, and that divers citizens did subscribe the same; but denied that it was wickedly or maliciously contrived; or that he, by false and sinister persuasions, did go about to procure any citizen to subscribe, contrary to their own intention and true meaning. That he, being a freeman and citizen of London, had taken an oath to defend and maintain the Franchises and Customs of the same; and, for above thirty years, had observed that the making and allowing of Captains, and ordering of the Trained Bands and Arms within the said city, were, from time to time, directed and disposed by the lord mayor and aldermen, and done by warrant of the lord mayor, for the time being, and not otherwise. Therefore this Defendant, conceiving himself bound by the said Oath, and not upon any wicked or malicious principles, did draw the said Petition, which he afterwards laid before learned counsel, by whom the same was approved, &c. That, as to the words charged in the Impeachment, to be spoken by him against the Parliament and their Privileges, he denied them; and said, That he never spoke any other words than such as were lawful and necessary to be used in prosecuting the Petitions, which had been some time before preferred to parliament, touching the granting of Protections, &c. and on which a Bill was then depending in the upper house. He denied also the words charged on him for hindering the loan of money for the public use, and all other circumstances relative thereto.

This Answer being read, the Lords ordered the further hearing of this cause to be at the bar of their house the 6th inst.

April 6.

The Lords proceeded in the Trial of Mr. Benyon, and the Committee of the Commons being come up, he was brought to the bar as a delinquent; when Mr. Serjeant Wyldes desired

that the Impeachment against him might be again read; after which,

Mr. Glynn opened part of his Charge, which he made to consist of two Articles: 1. "Benyon's maliciously contriving, subscribing, procuring, and getting hands to a false, dangerous and seditious Petition, containing therein divers false, scandalous, and seditious matters, 2. For speaking divers false and scandalous Speeches in derogation of the privilege of Parliament." To prove the first, these Witnesses were produced, and deposed as follows: Moss, scrivener, said, "That Mr. Gardiner brought the Petition to his shop to be subscribed, and Benyon brought many persons along with him to subscribe the same. That he appeared in it more than any other, coming four or five times a day, to enquire how the Subscription went forward. He further said, That he subscribed the said Petition himself, because he heard Benyon say that it was approved of by counsel. And he asking Benyon if it was not too late to present the said Petition to parliament, now that the Ordinance for the Militia was settled, he answered, 'It was not.' Edm. Harvey said, 'He went with Benyon to see the said Petition, at Moss's shop; and, after he had read it, he told Benyon he would not subscribe it, because it was full of untruths; for the Lord Mayor hath no power over the Militia, because he cannot draw out any of the Trained Bands, on Shrove-Tuesday, without authority from the king; and farther he told Benyon, He heard the Ordinance for settling the Militia was passed already in parliament; and therefore thought it would come too late. Benyon answered, 'That he had taken Mr. Recorder's opinion on the Petition, and he thought it right; and said, it would not come too late.'" S. Edmonds and J. Offley deposed much to the same purpose; and for the words, there was only Robert Stevens produced to prove them.

After this Mr. Glynn observed, "That the time when the Ordinance for the Militia passed in Parliament, was the 9th of Feb. last, and the discourse concerning this Petition was on the 19th. That the time when Benyon presented this seditious Petition was, when both houses had declared that the kingdom was in imminent danger. The consequence of this ill example was, that other counties had taken the same boldness to contrive Petitions of this nature; and the king's Answer of Feb. the 28th last, had succeeded it. For these great Crimes and Misdemeanors the Committee desired, in the behalf of the House of Commons, that their lordships would give some severe Judgment against the said Benyon."

Mr. Benyon then made it his humble desire, That he might Answer by his counsel; and that the same Witnesses, which were produced now against him, might be present when his Defence was made; and he to have liberty to cross-examine them; which was granted.

April 6.

The Commons proceeded in Mr. Benyon's

cause; when divers Witnesses were produced to shew, That there was nothing of Sedition or malice in Benyon, in the management of the Petition; as is charged; but that, by the command of the Lord Mayor, he advised with the Recorder about it, who approved of it both for the legal and customary part. He likewise shewed, That the practices had been for the Lord Mayor of London to make choice of the Trained Bands belonging to the city. To the second part of his Charge, concerning scandalous words, he proved, by four other witnesses, that he spoke no such words as were charged against him.

April 7.

The Lords took into serious consideration the Impeachment against Benyon, and likewise his Answer and Defence; and, after several questions, at last resolved on the following Sentence against him.

"1. That the said Benyon, for the first offence charged, (the second, for words, being dropped) shall be disfranchised the city of London. 2. That he shall for ever, hereafter, be incapable of bearing any place or office in the commonwealth. 3. That he shall be fined

3,000*l.* to the king. 4. That he shall be imprisoned in the castle of Colchester for two years; and, after that time, to find such sureties for his behaviour as this house shall thinke fit."

All which Sentence, in the presence of the Commons, was pronounced against him \*.

\* The same day, the Commons sent up an Impeachment against sir Wm. Wilmer, *knt.* then High Sheriff of the county of Northampton, for high crimes and misdemeanors, for breaking the Privileges of Parliament, and for endeavouring to disturb the peace of the kingdom by seditious words and actions. The principal Complaint against this gentleman was, for publishing, by virtue of his majesty's warrant, a printed Book, entitled, "Several Petitions and Messages of Parliament, concerning the Militia of the Kingdom, with his Majesty's Answers thereto," and granting a warrant of his own to enforce it. All which the said gentleman had confessed: the consideration of this affair was deferred to another time. —But nothing further has been met with concerning it.

## 164. Impeachment of Sir EDWARD DERING,\* *knt.* for High Crimes and Misdemeanors: 18 CHARLES I. A. D. 1642. [Lords' Journals. 2 Cobb. Parl. Hist. 1147.]

March 28, 1642.

A Conference was held between the two Houses; when the Commons informed the Lords, That a Petition had been framed in Kent, and intended to be delivered to Parliament, which was of dangerous consequence. This was on the Information of one Francis Jones, who averred, That the Petition was produced and read at the Assizes, at Maidstone, the 25th of March last, and consisted, to the best of his memory, of these particulars: "That the government of Bishops might still remain, they being as antient as Christianity in England: that the Liturgy and Common Prayer might still remain: that such might be punished who either absent themselves from it, or speak against it; and that all ministers and people might be brought into this uniformity: that no Order should issue out of either House, to oblige the people, unless it was an act of parliament: that no Order should issue concerning the Militia, from either house, without the king's hand to it: that they would presently apply themselves to his majesty's

Message of the 20th of January last; that they would establish the civil law: that they who were civil lawyers might not lose their studies: that they would speedily relieve their brethren in Ireland: that they would be pleased to establish the privilege of parliament, and the king's regal power. Lastly, That sir Edward Dering pressed, with great earnestness, to have a copy of this Petition sent to the King; but, as he thought, it was denied."

The Commons further informed the Lords, That they found sir Edward Dering, sir Roger Twissell, sir George Strode, and Mr. R. Spencer, had been active men in contriving and presenting this Petition; they therefore desired the said gentlemen might be sent for, as Delinquents, which was accordingly ordered by the Lords, and a Select Committee, of both houses, appointed to examine this business to the bottom \*.

\* He had brought in the bill "For the utter eradication of Bishops, Deans, and Chapters, &c." "Which," says lord Clarendon, "the governing party prevailed with sir Edward Dering, (a man very opposite to all their designs, but a man of levity and vanity, easily flattered, by being commended,) to present into the House."

\* "This same day, a copy of the Kentish Petition was produced in the House of Lords by the earl of Bristol, who said he had it delivered to him by Judge Mallet. This being read, which was no more than an enlargement on the foregoing Heads, the earl was asked, Whether he had taken a copy of this Petition? who answering Yes, he was commanded to withdraw. Then Mr. Justice Mallet was examined; who said, "That he had the Petition from sir George Strode, and that he shewed it to the earl of Bristol, who took a copy of the same." Hereupon the Lords taking this affair into con-

April 6.

The Commons by Message informed the Lords, that sir Edward Dering being committed to the custody of the Serjeant had effected his escape. They therefore desired that some speedy course might be taken to stop him at the Ports, and bring him back; which the Lords ordered accordingly.

April 26.

The Lord Keeper reported to the Lords a Conference had with the Commons, concerning sir Edward Dering, That they had presented the following Impeachment against him:

aideration, conceived that the Judge had committed a great offence, contrary to his duty, as Judge of the Assize, and as an assistant to this house, in not revealing the Petition to them till he was forced to it. And, after a long debate, the question was put, Whether there were not some words, in this Petition, scandalous, dangerous, and tending to sedition? It passed in the affirmative. Likewise the earl of Bristol, because he had this Petition delivered to him, being of so dangerous a consequence, and took a copy of it without doing his duty in acquainting the house of Lords therewith, was committed to the Tower, for the present, until this business should be further examined. The earls of Bath, Dover, Portland, Monmouth, with the lords Mowbray, Grey, Howard, and Capel, dissenting. Judge Mallet, also, underwent the same sentence." 2 Cobb. Parl. Hist. p. 1148.

Clarendon says, "Judge Mallet was committed to the Tower the last Lent, for having seen a Petition prepared by the grand jury of Kent, for the countenance of the Book of Common Prayer, and against the imposition of the Militia by Ordinance without the royal assent. This judge (being, this summer circuit, again judge of assize for those counties) sitting at Maidstone upon the great assize, some members of the house of commons, under the stile and title of a committee of parliament, came to the bench; and, producing some votes, and orders, and declarations of one or both houses, 'required him, in the name of the parliament, to cause those papers,' (being on the behalf of the ordinance of the militia, and against the commission of array), 'to be read.' He told them, 'that he sat there by virtue of his majesty's commissions; and that he was authorized to do any thing comprised in those commissions; but he had no authority to do any thing else; and therefore, there being no mention, in either of his commissions, of those papers, or the publishing any thing of that nature, he could not, nor would not do it;' and so (finding less respect and submission, than they expected, both to their persons and their business, from the learned judge, and that the whole county, at least the prime gentlemen and the grand jury, which represented the county, contemned both much more) this committee returned to the house with great ex-

ARTICLES OF IMPEACHMENT of Sir EDWARD DERING, knt. and bart, by the Commons assembled in this present Parliament, in the name of themselves and of all the Commons of England, for high Crimes and Misdemeanors by him committed as follows:\*

I. "That whereas an Ordinance was lately made and agreed upon by both Houses of Parliament, for the settling of the Militia of this kingdom, for the safety and preservation thereof in these times of imminent danger; the said sir Edward Dering, knowing thereof, and having been lately a Member of the Commons House in Parliament, and by order of the said House, for offences by him committed, expelled the same,† out of a malicious and wicked intention to cross and hinder the said Ordinance; to interrupt and scandalize the proceedings of Parliament; to set division between his majesty and the parliament; and to raise sedition and tumult in the county of Kent, and in other parts of this realm; in or about the month of March last past, by practice and combination with R. Spencer, esq. sir Roger Twisden, and sir Geo. Strode, and others, did wickedly and maliciously contrive and frame certain dangerous and seditious Heads or Articles of a Petition to be presented to the parliament, for and on behalf of the gentry, ministers, and commonalty of Kent; amongst which some were to this or the like effect, viz. 1. 'That no Mem-

clamations against Mr. Justice Mallet, 'as the fomentor and protector of a malignant faction against the parliament.' And, upon this charge, a troop of horse was sent to attend an officer; who came with a warrant from the houses, or some committee (whereas Justice Mallet, being an assistant of the house of peers, could not regularly be summoned by any other authority) to Kingston in Surrey; where the judge was keeping the general assizes for that county; and, to the unspeakable dishonour of the public justice of the kingdom, and the scandal of all ministers or lovers of justice, in that violent manner took the Judge from the bench, and carried him prisoner to Westminster; from whence, by the two houses, he was committed to the Tower of London; where he remained for the space of above two years, without ever being charged with any particular crime, till he was redeemed by his majesty, by the exchange of another whose liberty they desired."

\* These Proceedings against sir Edw. Dering are taken from the Lords Journals: There is no mention made of them in Rushworth or Whitlocke. Lord Clarendon, indeed, tells us, "That several gentlemen of the county of Kent, who had subscribed and advised the Petition, were sent for as delinquents; and Charges and Articles of Impeachment drawn up against them." Vol. 2. p. 487.

† For printing his Speeches. See 2 Cobb. Parl. Hist. 1072.

her of the House of Commons should be put out of the said house, without shewing a reason for the same; and that they shew some cause why the said sir Edward Dering was put out of the said house. 2. That his majesty's subjects should not be bound by any Order of either of the said houses. 3. That no Ordinance of the said house touching the Militia should bind the subjects, without his majesty's assent thereunto.' And for the better effecting thereof, at the assizes holden for the said county, on Tuesday the 22nd of March 1641, the said sir Edward Dering, being then, and yet, a justice of the peace of the said county, together with the said sir George Strode, and divers other justices of the peace of the said county, then present in court, by the practice and combination aforesaid, did offer himself to serve on the grand inquest at the said assizes; albeit there was another sufficient grand jury then returned by the sheriff, (whereof he was none) and no exception taken to the same; and that no justice of peace, or other gentlemen of that rank and quality in that county, had served upon any grand jury at the assizes, for many years then before: and the said sir Edward Dering, together with the other said justices of the peace, upon their said offer, being sworn and impanelled of the said jury, the said sir Edward Dering, with the said sir George Strode, by the practice and combination aforesaid, and to the intent and purpose aforesaid, did tender the said heads to the said grand jury; and did then and there wickedly and unlawfully persuade, labour and solicit the rest of the grand jury to agree to the same; and have them drawn into a Petition to the parliament, to be presented by the said grand jury to the judge of the said assizes and the rest of the bench there, to be, by them, assented to and approved of; and did then and there wickedly conjure the said grand jury to secrecy, and not to discover any thing touching the said Petition, till it should be, by them, agreed upon and presented as aforesaid; falsely persuading them that they were thereunto bound by their oath.

II. That whereas the said grand jury did not, nor would agree to the said Petition or Heads; but a great part of them did utterly refuse and oppose the same, and resolve to protest against it; yet the said sir Edward Dering, together with the said sir George Strode, by the practice and combination aforesaid, did, at the same assizes, wickedly and seditiously contrive and frame a dangerous, scandalous, and seditious Petition, to be presented to the parliament, consisting of many of the heads aforesaid, and others, and the same did present to the bench at the said assizes; and, by false and sinister suggestions, persuasions and solicitations, caused the same to be voted and assented to in open court; and did further say, That the same should be accompanied with 40,000 persons, and that they should meet at Deptford, Greenwich, or Blackheath, to go to the parliament; and did likewise openly move in court, That there might be three copies made of the said

Petition, one to the house of lords, another to the commons, and a third to his majesty.

III. That the said sir Edward Dering, together with the said R. Spencer, sir R. Twisden sir G. Strode, and others, by the practice and combination, and to the intent aforesaid, at the said assizes, and at other times, did wickedly and seditiously publish the said Petition; and caused the same to be put into the hands of one Pope, an attorney at law, dwelling at Maidstone aforesaid, to make and deliver out copies thereof, to be dispersed throughout the said county, and divers copies thereof were given out and dispersed accordingly.

IV. That the said sir E. Dering, together with the rest of the said confederates, by the practice and combination aforesaid and to the intent aforesaid, did unlawfully, wickedly and maliciously, procure many hands to the said Petition; and did labour and solicit divers of the inhabitants of the said county to assemble and meet at Deptford or Greenwich, in the said county, or some other place, thereabouts, in great multitudes, to go along with the said Petition; intending thereby to have raised commotion and sedition amongst the people, and to have awed the parliament.

All which doings of the said sir E. Dering and his confederates, were, and are, great and high breaches of the privileges of parliament; and contrary to his oath and the duty of a justice of peace; tending to sedition, and to the apparent danger of both his majesty's kingdoms of England and Ireland; and the said sir E. Dering being sent for to the house of commons, and under examination of a committee of both houses of parliament for the said offence, is since fled, in great contempt of both the said houses.

And the said Commons, by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any other Accusation or Impeachment against the said sir E. Dering; and of replying to the Answer which he shall make to the said Articles, or any of them; and of offering proof of the premises, or any of them, or of any other Impeachment or accusation which shall be exhibited against him, as the case, according to the course of parliament, shall require; do pray that the said sir E. Dering may be put to answer to all and every the premises in the presence of the commons; and that such further proceedings, examinations, judgments and executions may be, upon every of them, had and used against him as is agreeable to law and justice."

This being read, his Lordship reported,

"That the Gentleman of the House of Commons, that managed the Conference, made some observations, and said, That your lordships see by this that hath been read unto you, that 'Nondum recentis Illi fatum stetit,' that notwithstanding the many strange and variable attempts against the parliament, and their wonderful and miraculous preservations, yet mischief is so fruitful and generative as to produce

a new brood of serpents; which are continually hissing, maligning, and practising against the pious and noble endeavours of both houses, and against the peace, prosperity and happiness of this afflicted kingdom. If the evil and seducing spirit, which doth animate these designs, were asked from whence he comes, doubtless his answer would be, 'From compassing the earth;' having removed his scene into many several parts, and found so many friends and patrons of his audacious achievements, amongst whom this gentleman, sir E. Dering, is one; a man of mark and eminency; of wit, learning, and zeal, at least in shew and appearance; and yet all these miserably shipwrecked upon the shelves and sands of the Kentish shore. The thing itself appears to your lordships to be a manifest breach of the rules of law, justice, and religion; and yet under the cloak of all three, a fast must be proclaimed to take away Naboth and his vineyard. The yeomanry of Kent, heretofore in great esteem, is now become vile and contemptible; an extraordinary grand jury must be prepared of knights, gentlemen, and justices of the peace, for some extraordinary service, which your lordships have heard what it is; they must descend from their places on the bench, and from themselves too, not to serve their country, (for that were no disparagement) but to serve their own unworthy, ambitious, and seditious ends.

"This gentleman, a ringleader, late a member of the house of commons, the great grand jury of the whole kingdom; and there so highly esteeming of his own wisdom, is contented now to descend so low as to become one of the common jury of the county; such is the meanness and pusillanimity of high thoughts, as, for compassing of their own ends, to stoop to any condition how low soever it may be.

"Having thus set the cards, he plays the game very foully: he leads his fellows out of the way; and makes them, like ill hunters, instead of following the chace, at the quest of one ill mouth, to fall upon a flock of sheep. Their duty was to have enquired, diligently, of the matters given them in charge. Surely this was out of the charge, because the judge had told them it was out of his commission; and yet they leave other matters, which they were charged with, as accidents and trifles; and insist upon this, which they had nothing to do with, as the principal business.—He obtrudes on them divers monstrous and seditious heads; and, by sinister suggestions, labours and solicitations, which ought not to be used to a jury; and, by a kind of violence offered them, seeks to inforce them to a consent contrary to their own reason, judgment, and consciences, when they refused, opposed, and protested against it. Failing of this, 'Flectere si nequeam superos, Acheronta movebo.' Instead of inquiring upon the statute of witchcraft and conjuration, he useth his conjurations and enchantments upon them, to conjure them to secrecy; falsely persuading them that they will be bound unto it by their oath:

when all this would not serve, he then applies himself to the bench; and, by the enchantments and conjurations used there, prevails so far as to have it there voted and assented to by such as were present: and to give the more strength and countenance to it, wants not the aid and concurrence of some appearing reverend divines, and of civilians also; and sticks not to affirm, that he can have 40,000 persons to attend the Petition; proclaims a meeting at Blackheath, a place fatal and ominous for actions of this nature; and all this under colour of a Petition; being, in truth, a challenge, an abjuration, and a scandal upon the parliament; and purporting nothing else but a desperate design to put not only Kent, but, for ought is known, all Christendom into combustion, carrying the sails full swollen with spite, arrogancy, and sedition. The particular instances he forbore to trouble your lordships with, because you will find some of them upon perusal of the Petition. He said many arguments he might use in aggravation of them, from the eminency of the power of the person, and the arrogancy of his mind; the acrimony of his spirit, and from the topping place of Kent, which former ages hath found obnoxious to these infelicities; which this gentleman, so well read in story, should have been mindful of in these troublesome times; but all these, and other circumstances, he left to your lordships noble and judicious consideration; desiring, amongst other motives, that your lordships will be pleased to reflect upon the acts of your own justice in a case of like nature\*; which, being first begun here, near at hand, might have spread the flame and contagion over all England; had not the great wisdom and justice of both houses, in due time, prevented it.

"He said, He should add no more at this time, but what he had read of a people in Africa which sent a challenge to the wind; whereupon, at the meeting, the wind blew down mountains upon them, and overwhelmed them; he hoped those bold and insolent adventurers, who have presumed to send a challenge, or defiance, to the great houses, shall find the like stroke of their wonted power and justice; and that they shall meet with such a wind as will blow down their high thoughts upon themselves, return their votes into their bosoms, and their mischievous designs upon their own heads. All which he was warranted, in the name of the house of commons, and of all the commons of England, to desire of their lordships; and that they will be pleased to make this gentleman, the principal author of this foul act, a spectacle and pattern of exemplary justice to present and future times."

Ordered, "That sir Edw. Dering, knt. and bart. shall appear before the lords in parliament on the 2nd day of May, and put in his Answer unto an Impeachment of the House

\* Mr. Benyon's Petition beforementioned, at p. 147.

of Commons brought up against him, or else the house will proceed against him by default."

Whether sir Edward Dering had been taken or not is not said, nor does any thing more upon the subject of this prosecution appear, except that,

On the 30th of April, the Commons proceeded further in the affair of the Kentish Petition: Sir Edward Dering's Book of Sentences being lately reprinted, they referred the consideration of that matter to a Committee; ordered the impression to be seized; and also to inquire who printed the said Petition, of which several bundles of copies had been found upon some of the petitioners. But notwithstanding these vigorous Resolutions of the commons, the men of Kent had the courage to come up to London with their Petition: for we find in the Journals the following entry, "The house being informed, that divers Gentlemen of the county of Kent were at the door, that desired to present a Petition to the house, they were called in, presented their Petition, and then withdrew: and their Petition was read, and appeared to

be the same that was formerly burnt, by order of both houses, by the hands of the common hangman." Hereupon, some of the Petitioners were called in, and examined: capt. Lovelace who said he preferred the Petition by command of the gentlemen assembled at Blackheath, was committed to the Gatehouse; and Wm. Boteler, who was also concerned therein having been at York since the seizures at Marston, was committed to the Fleet: but, the other gentlemen that presented the said Petition being called in, Mr. Speaker, by command of the House, told them, "The house has considered of the Petition that you presented. And they know you cannot be ignorant who opinion both houses have formerly expressed of the same Petition: yet, considering that you are young gentlemen, misled by the solicitation of some not affected to the peace of the kingdom; and that, howsoever they intend to proceed against the chief agents and prime actors in this business, yet they are willing that you should be dismissed, hoping that you may hereafter prove good members of the commonwealth."

165. Proceedings against Sir RICHARD GURNEY,\* knt. and bart. Lord Mayor of London, on an Impeachment of High Crimes and Misdemeanors: 18 CHARLES I. A. D. 1642. [4 Rushw. Coll. 779, 783. 2 Cobb. Parl. Hist. 1406.]

ON the 5th of July, 1642, the Commons sent up Mr. Serjeant Wyld to the House of Lords, with the following:

ARTICLES OF IMPEACHMENT of the House of Commons against Sir RICHARD GURNEY, knight and baronet, Lord Mayor of the city of London.

I. That the said sir Richard Gurney being nominated, elected and chosen, Lord Mayor of

the said city of London, for this present year 1642, and in the year of our sovereign lord king Charles, of England, Scotland, France and Ireland, &c. the 18th; whereby the ordering, rule and government of the said city of London, was committed to the trust, care, and charge of him the said sir Richard Gurney; he the said sir Richard Gurney, in or about the month of June last past, and during the time of his mayoralty as aforesaid, in contempt and

\* This sir Richard Gurney, whom king Charles created a Baronet in Dec. 1641, had very much exerted himself in repressing the Tumults in the City excited during the Proceedings against the earl of Strafford, by which conduct he conciliated the favour of the King, and incurred the enmity of the Parliament, by whom he was specially excepted in the Militia Bill. A few days before this Impeachment he had been censured by the Commons for publishing a Proclamation of the king. See 4 Rush. 686, 2 Cobb. Parl. Hist. 1203, 1103. Lord Clarendon repeatedly mentions him with high commendation, calling him, "a man of wisdom and courage; who expressed great indignation to see the City so corrupted by the ill artifices of factious persons," and in another place saying, "Sir Richard Gurney cannot be too often or too honourably mentioned." Speaking of the Tumults about Whitehall, after the king had removed thither from Hampton Court, the noble historian thus expresses himself: "These

insurrections were so countenanced, that no industry or dexterity of the lord mayor of London, sir Richard Gurney, could give any check to them; but instead thereof, himself (with great and very notable courage opposing all their fanatic humours, both in the Court of Aldermen and at the Common Council) grew to be reckoned in the first form of the Malignants (which was the term they imposed upon all those they meant to render odious to the people) insomuch as his house was no less threatened and disquieted by the Tumults, than the House of Lords: and when he apprehended some of those who were most notorious in the Riot, and committed them to the custody of both the Sheriffs of London in person to be carried to Newgate, they were, by the power and strength of their companions, rescued from them in Cheapside, and the two sheriffs compelled to shift for their own safety. And when it was offered to be proved by a member in the House of Commons, that the wife of captain

malice against the parliament, and the proceedings thereof; and contrary to his oath, and the faith and trust reposed in him; and with an intent, purpose and resolution, to overthrow the ancient customs and usages of the said city; and with an intent, purpose and resolution, to bring in an arbitrary and tyrannical government, contrary to the laws and statutes of this realm, and the settled government established in the same kingdom; and with an intent and endeavour to levy war against the parliament, did, in or about the month of June last past, proclaim and publish, or did cause and procure to be openly read and published, within the said city of London, and suburbs of the same, divers illegal proclamations, containing in them matters of dangerous consequence, and contrary to the votes and orders of both houses of parliament, and likewise contrary to the rights and privileges thereof, and the liberty and property of the subject.

II. That wherein or about the month of December last past, a great number of his majesty's dutiful and loyal subjects, in and about the city of London, did contrive and draw up a certain Petition, wherein were contained many of their grievances, with an intent to present the same to the honourable house; he the said sir Richard Gurney being then and now Lord Mayor of London, did earnestly labour and endeavour to suppress the said Petition, and to hinder the same from being delivered to this honourable house; and did threaten and me-

nace the said petitioners, and imprisoned divers of them, contrary to the laws and statutes of this realm, and contrary to the liberty of the subject.

III. The said sir Richard Gurney, together with one Benyon, did further plot and contrive one seditious and scandalous Petition, containing matters of dangerous consequence, endeavouring thereby to raise tumults and discords within the said city, and to make and increase the difference between his majesty and the parliament; whereupon many insolent persons, ill-affected to the state, and the proceedings of parliament, did, in a riotous and unlawful manner, assemble and gather themselves together in Cheapside within the said city, and then and there committed many riotous acts, contrary to the peace of our sovereign lord the king, and contrary to the civil government of the said city. And he the said sir Richard Gurney, did purposely, wittingly and willingly permit and suffer the aforesaid riotous persons to escape, without due and deserved punishment of law.

IV. That whereas, by order of both houses of parliament, the said Lord Mayor was appointed to call a common-council: He refused so to do; And when a common-council was called by the said sir Richard Gurney, it was moved, on the behalf of both houses of parliament, that great quantity of arms, and other ammunition, should be laid into some store-houses within the said city, for his majesty's

Venn (having received a letter from her husband to that purpose) who was one of the citizens that served for London, and was known himself to lead those men, that came tumultuously down to Westminster and White-Hall, at the time of the passing the Bill of Attainder of the Earl of Strafford, had with great industry solicited many people to go down with their arms to Westminster, upon a day (that was named) when she said, her husband had sent her word, that in the House of Commons they were together by the ears, and that the worse party was like to get the better of the good party; and therefore her husband desired his friends to come with their arms to Westminster to help the good party; and that thereupon many in a short time went thither: They who offered to make proof of the same, were appointed to attend many days; but notwithstanding all the importunity that could be used, were never admitted to be heard. And the king in his Message to both Houses, April 28, 1642, tells them, That "the demeanour of the Lord Mayor of London had been such that the city and the whole kingdom was beholden to him for his example." See 2 Cobb. Parl. Hist. 1203.

Of this prosecution Clarendon thus speaks: "Towards such, as any ways (though under the obligation of oaths or offices) opposed or discountenanced what they went about, the parliament proceeded with the most extravagant severity that had been ever heard of; of which I shall only mention two instances; the first,

of the lord mayor of London, sir Richard Gurney, a citizen of great wealth, reputation, and integrity; whom the lords had, upon the complaint of the House of Commons, before their sending the last petition to the king (of which his majesty gave them a touch in his Answer) committed to the Tower of London; for causing the king's Proclamation against the Militia, by virtue of his majesty's writ to him directed, and according to the known duty of his place, to be publicly proclaimed. And shortly after, that they might have a man more compliant with their designs to govern the city, notwithstanding that he insisted upon his innocence, and made it appear that he was obliged by the laws of the land, the customs of the city, and the constitution of his office, and his oath, to do whatsoever he had done: He was by their lordships, in the presence of the commons, adjudged 'to be put out of his office of Lord Mayor of London; to be utterly incapable of bearing office in city or kingdom, and of all honour or dignity: and to be imprisoned, during the pleasure of the two houses of parliament.' And upon this Sentence alderman Pennington was, by the noise and clamour of the common people, against the customs and rules of election, made mayor; and accordingly installed; and the true, old, worthy mayor committed to the Tower of London; where with notable courage and constancy, he continued almost to his death."

service, and the good and safety of the kingdom; he the said sir Richard Gurney, being ill-affected to the state, and the proceedings of parliament, did, in a most obstinate and malicious manner, withstand, refuse or gainsay the same, contrary to the order of both houses of parliament, giving many insolent speeches against the authority thereof, with an intent and purpose to discourage all well-affected persons to yield obedience to the orders of parliament, and to make difference and division between his majesty and the parliament. All which matters and things have been perpetrated, committed, and done by him, the said sir Richard Gurney, during the time of his mayoralty aforesaid.

Upon this, the Lord Mayor was brought to the bar, as a Delinquent, kneeling upon his knees, until he was wished to stand up. And then the Speaker told him, he was impeached by the House of Commons of High Crimes and Misdemeanors. The Impeachment being read unto him, the Speaker desired his Answer; and he confessed he caused the said Proclamation to be published. Then he was commanded to withdraw; and being called in again, he was asked by the Speaker, whether he will justify and stand to this Answer or no. He answered, That he desired to have counsel to advise him in his Answer, and some time to answer. Hereupon he withdrew; and it was Ordered, That the said sir Richard Gurney shall have Counsel allowed him; and that he shall put in his Answer to this Impeachment in person on the 8th instant.

July 8th being the day appointed for the Lord Mayor to make Answer to his Charge, he was called to the bar, as a Delinquent, where he delivered in the following Answer:

"The Humble Answer of sir Richard Gurney, knt. &c. This Defendant, saving to himself all benefit of exceptions to the Impeachment against him exhibited by the honourable house of commons, saith, That he, this Defendant, is not guilty of all or any of the Crimes and Misdemeanors, in and by the said Impeachment against him charged.

"R. GURNEY."

July 11.

At a Conference the Commons exhibited, to the Lords, a further Impeachment against the Lord Mayor; which being afterwards read to him at the bar, he desired more time might be given him to answer by counsel. And being asked, Why he refused, at the last Common Council, to put the Question for stowing the magazine that came from Hull, in the city; according to order of both houses, but protested against it? The Lord Mayor answered, He thought not fit to lay so much powder in the city, being dangerous; there being much there already, and more they cannot find room for. Afterwards he withdrew, and then it was resolved, "That the Lord Mayor of London, for his contempt to this House, shall be committed to the Tower; and that the Lieutenant there

shall take care to keep him in safe custody, as he will answer it at his peril."

July 13.

Both Houses having been at some trouble to get any Alderman of London to act for the Lord Mayor during his Imprisonment, several of them having absolutely refused it, as not consistent with their oath to the City: It was ordered That the Lord Mayor be commanded to depute some person to be locum-tenens, for the government of the City of London, and calling of common councils. On the 14th sir John Conyers, Lieutenant of the Tower, who was ordered to deliver the foregoing Message, acquainted the Lords, That the Lord Mayor said, He had no power to appoint a deputy for the government of the City, during his absence. Hereupon the Lords ordered, That sir George Whitmore, knt. and alderman, in the absence of the Lord Mayor, do cause a court of Aldermen to be summoned, to meet at Guildhall the next day; and they, so summoned, are strictly enjoined to appear accordingly; then to make choice of a locum-tenens, or to consider of what other way will be according to the custom and charters of the city, for the safety and good government thereof; and to give account of their Proceedings therein to the said lords in parliament, on the 16th instant.

July 15.

The Lord Mayor was brought to the bar as a Delinquent, the Commons being present: where, kneeling till he was bid to rise, the Speaker asked him, if he had brought his Answer to the Commons additional Impeachment against him; which he delivered in, and it was read in *hac verba*:

The Humble Answer of Sir-RICHARD GURNEY, Knt. and Bart. Lord Mayor of the City of London, to a Second Impeachment exhibited against him to the right hon. the Lords in Parliament, by the hon. the house of Commons.

"The Defendant, saving to himself all benefit of exception to the said Impeachment, as to all and every the wicked and malicious advising, countenancing, persuasions, solicitations, and practices mentioned; and as to the illegal Imprisonment of John Carter, Wm. Gough, and Rd. Arnold, or any other Apprentices within the city of London; as also to the charge of Breach of his Oath, and neglect of the duty of his place; and to all and every, or any other offences, practices, contempts, and misdemeanors, by the said Impeachment laid to this Defendant, he saith, That he is not of them, or any of them, guilty in such manner and form as the same are in and by the said Impeachment charged."

July 20.

A Certificate from the Aldermen of London, concerning the election of a locum-tenens, in the room of the Lord Mayor, was presented and read, importing, "That they had met together according to the direction, and on the day prefixed by the house; and that having

called unto them the City Counsel, and others experienced in the customs and charters of the said city, and, after diligent search of their records, they did humbly certify, That it did not appear that ever, at any time, the aldermen had made choice of a locum-tenens to execute the office of a Lord Mayor: but they found, That in the time of a Lord Mayor's sickness, he being within the franchise, there had been a locum-tenens appointed by himself, the sword still remaining with him; all which they humbly presented, &c." Signed by 15 Aldermen.

August 12.

The Commons with their Speaker came to the Bar of the Lords' house, and demanded Judgment against sir Richard Gurney, knight and baronet, Lord Mayor of the city of London, impeached by them before the Lords in Parliament; whereupon the Lord Mayor was brought to the bar, and the lord Kimbolton being then Speaker, pronounced the Sentence following, viz.

"Whereas sir Richard Gurney, knight and baronet, lord mayor of the city of London, hath been impeached by the knights, citizens and burgeses of the House of Commons, for causing proclamations to be made in several places of the city of London, for the putting in execution the Commission of Array, tending to the raising of forces against the parliament, and the subversion of the laws and peace of this kingdom; and for the framing of two false and scandalous Petitions, to set division between his majesty and the parliament, and the parliament and the city; and for imprisoning certain Apprentices, who had framed a petition unto the parliament; and for not punishing or proceeding against certain rioters, or misdoers within the city of London acted on or about the 2nd of February, 1641. And for refusing or neglecting to call a Common-Council for the good and safety of the said city and kingdom, being thereunto commanded by the authority of both houses of parliament.

"The lords having taken the said Charges into their due consideration, do find the said sir Richard Gurney, lord mayor of the city of London, guilty of causing the said proclamation for putting the Commission of Array in execution, to be published, tending to the disturbance of the peace of this kingdom, and of not suppressing the said riots and misdemeanours, and of not calling a common-council, as he was by order of parliament required.

"And for the said offences this high court

doth award and adjudge, 1. That the said sir Richard Gurney shall be no longer lord mayor of the city of London. 2. That he shall be hereafter incapable to bear any office in the said city of London. 3. That he shall be incapable to bear or receive any further honour hereafter. 4. That he shall be imprisoned in the Tower of London during the pleasure of this house."

August 18.

This day, the Lords were informed, That, according to their Order, sir Nich. Raynton, senior alderman of London, had called a common-hall, and that the citizens had elected alderman Pennington their new Lord Mayor; and it was necessary and consistent with the ancient customs of the city, that he be sworn and presented at Westminster, &c. That the city having sent to sir Richard Gurney for the sword, cap, mace, and collar of SS's, he pretended that they were locked up at his house, and he could not come at them: but being asked, again, Whether he would deliver them if he had them? He denied to deliver the sword to any but the king from whom he received it. Upon this it was first ordered, "That the thanks of the House should be given to sir Nich. Raynton and the rest of the Aldermen, for their cheerful, ready, and orderly obedience to the commands of this house: that they approved of alderman Pennington for Lord Mayor, as his good affections were well known to be for king, kingdom, and privileges of parliament: that he should have the usual oaths given him by the court of aldermen: and two barons of the Exchequer should attend the next day for the lord mayor to be presented and sworn." Lastly, it was ordered, "That the gentleman usher, attending that house, should go to the house of sir Richard Gurney and demand the sword, &c. and if he denied, to break open any doors or locks whatsoever, and possess himself of them, and deliver them to alderman Pennington, now lord mayor elect of the city of London."

The next day, the gentleman usher gave the Lords this account, "That, according to their Order, he had taken out of sir Richard Gurney's study four swords, belonging to the city, one cap of maintenance, one embroidered crimson cap, one collar of SS's with a great jewel and a pendant pearl, and one great mace, belonging to the city; all which particulars he had delivered to the lord mayor elect, and had his receipt for them."

## 166. Articles of Impeachment against Sir THOMAS GARDINER Recorder of the City of London, for High Crimes and Misdemeanors: 18 CHARLES I. A. D. 1642. [4 Rushw. Coll. 780]

ARTICLES OF IMPEACHMENT against Sir THOMAS GARDINER, Recorder of the city of London.

I. THAT the said sir Thomas Gardiner being now, and for six years last past having been Recorder of the city of London, and having taken an oath for his faithful discharge of his said office, and to maintain the franchises and customs of the said city, and not to discover the counsel thereof to the hurt of the same, did in the year of our Lord God 1633, contrary to the laws of this kingdom, and contrary to his oath, wickedly advise, direct, and earnestly press sir Maurice Abbot, knight, then Lord Mayor of London, the aldermen and common-council of

\* He was one of the counsel for the earl of Strafford. Vide ante. Whitelock's Mem. 43. He was one of the King's Commissioners for the Treaty at Uxbridge. See Whitelock's Mem. p. 120. His son was an active officer in king Charles's Army.

"From the time the calling a parliament [the Long Parliament] was resolved upon, the king designed sir Thomas Gardiner, who was Recorder of London, to be Speaker in the house of commons; a man of gravity and quickness, that had somewhat of authority and gracefulness in his person and presence, and in all respects equal to the service. There was little doubt but that he would be chosen to serve in one of the four places for the city of London, which had very rarely rejected their Recorder upon that occasion; and lest that should fail, diligence was used in one or two other places that he might be elected. The opposition was so great, and the faction so strong, to hinder his being elected in the city, that four others were chosen for that service, without hardly mentioning his name: nor was there less industry used to prevent his being chosen in other places; Clerks were corrupted not to make out the writ for one place, and ways were found out to hinder the writ from being executed in another, time enough for the return before the meeting: so great a fear there was, that a man of entire affections to the king, and of prudence enough to manage those affections, and to regulate the contrary, should be put into the Chair. So that the very morning the parliament was to meet, and when the king intended to go thither, he was informed that sir Thomas Gardiner was not returned to serve as a member in the house of commons, and so was not capable of being chosen to be Speaker; so that his majesty deferred his going to the house till the afternoon, by which time he was to think of another Speaker." Clarendon.

the said city, and others at several times since to impose, levy, and take of the said citizens and inhabitants, without their consent in parliament, the illegal tax of Ship-Money. At being told by some of the said common-council, that the tax of Ship-Money was against law: he the said sir Thomas Gardiner replied There would be law found for it ere long.

II. That the said sir Thomas Gardiner, in the said year 1633, did wickedly advise and persuade the said Lord Mayor, aldermen and common-council of London, that they ought at their own will and pleasure, by force and power of the acts of that court, tax and levy on the said citizens and inhabitants, without their consent in parliament, a certain sum of money by way of loan, to furnish his majesty for his wars; affirming, that such acts would bind and compel the citizens to pay the same. And also in the said year 1638, contrary to his oath, and against the said laws of the land, did wickedly advise and direct the then Lord Mayor, aldermen, and common-council, to raise and levy an army of 3,000 men of the Trained Bands of the said city, to serve his majesty in his wars in the north, against his majesty's subjects of Scotland. And therein he affirmed, That every subject was bound by his allegiance to serve the king; and that neither the statute-law nor their charters could excuse them: Saying also at the same time, It is now no time to plead statutes and charters.

III. That about the month of February, 1639, he the said sir Thomas Gardiner, contrary to his oath, and to the laws of the land, did earnestly persuade and press sir Henry Garraway, knight, then Lord Mayor, the aldermen and common-council of London, to impress, clothe, and conduct 200 men of the said citizens and inhabitants, to serve the king in his wars in the north, against his majesty's subjects of Scotland: And although the same was refused to be done by the said court of common-council, as a thing against law; yet by the persuasion of the said sir Thomas Gardiner, the same was then performed by the then Lord Mayor, and the money paid for the same out of the chamber of London, without any consent or approbation of the said court of common-council, contrary to the liberties and customs of the said city, and in subversion of them.

IV. That a Petition directed to his majesty, being prepared in the said year, 1638, by the said then Lord Mayor, aldermen and common-council, setting forth the laws and statutes of this kingdom, and the charters of the said city, to exempt the said citizens and inhabitants of London, from certain illegal taxes and services, whereby his majesty might be pleased

not to continue such his demand of men and money from them. He the said sir Thomas Gardiner, contrary to his oath, and duty of his place, did reveal and disclose to his majesty their counsel and intention of delivery of that Petition, and then told the persons appointed to deliver the same Petition, that his majesty would receive no Petition from them.

V. That the said sir Thomas Gardiner, to the end to preserve himself from being questioned for the same crimes, laboured to hinder the calling of parliaments; and therefore in the month of May, in the year 1640, presently after the dissolving of the parliament, he the said sir Thomas Gardiner, advised and persuaded the then Lord Mayor, aldermen and common-council of London, to lend the king 100,000*l.* for his wars against his majesty's subjects of Scotland. And albeit they told him, it was not safe for them to do it, when the parliament and the kingdom had refused it, yet he earnestly persuaded them thereunto; and in or about July in the said year 1640, when many thousands of the said citizens of London joined in a Petition to be delivered unto his majesty to call a parliament, for settling the distractions of this kingdom, and for the peace and welfare thereof, and of his majesty's kingdom of Scotland; he the said sir Thomas Gardiner did earnestly dissuade them from it, saying, it was dangerous and needless, and the Petition would come unseasonably to interrupt the king's affairs.

VI. That in December last, when a Petition was prepared and subscribed by many thousands of the said citizens to be presented to the house of commons, to assure them of their good affection to the king and parliament, and not to divert the parliament in their just ways; he the said sir Thomas Gardiner, caused some of the Petitioners to be sent for before the lord mayor and himself, and questioned them as rioters and disturbers of the peace, saying, that the putting their hands to a Petition was the way to put all together by the ears. And being then answered by some of the said Petitioners, that they sought nothing but peace; he replied in these or the like words, Is this your way to peace? no, it tends to sedition and blood, and to cutting of throats; and if it come to that, you may thank yourselves, your bloods be upon your own heads. And he used other threatening speeches to discourage and terrify the petitioners from further proceeding in their said Petition, which Petition was afterwards presented to the lords and commons in parliament, and well approved by them, and doth not contain any dangerous matter, as was maliciously by him pretended, as may appear by a Copy of the Petition hereunto annexed.

VII. That in January last at a court of common-council in London, an order of the house of commons was sent and delivered to the lord mayor, aldermen and common-council of the said city, appointing them to make choice of meet persons to have the ordering of the militia; whereat the said sir Thomas Gardiner was present, and took notice of the said order,

and declared his opinion, that the persons of the committee formerly chosen for the safety of the said city, were the fittest men to take that service upon them. Whereunto the lord mayor and sheriffs desiring to be excused, the persons of the said committee were chosen by a clear vote, and their names sent to the house of commons, and by them and the house of peers allowed and approved of: Yet afterwards he the said sir Thomas Gardiner endeavouring and plotting to hinder the proceedings in parliament, the peace and safety of this kingdom, did most maliciously and wickedly advise, and direct the making and framing of two false and seditious Petitions; and he the said sir Thomas Gardiner, upon perusal of them, affirmed the matters contained in them to be agreeable to law, and to the custom of the said city, thereby encouraging divers of the said city to subscribe the same, and to send the one of them to be presented to his majesty, and the other unto the lords and commons in parliament; which Petitions do contain in them divers false, scandalous, and seditious matters; and in particular, that Petition annexed hereunto, a copy whereof was afterwards subscribed by divers citizens, and presented to the house of commons, containing false matter, that the ordering of the arms of the said city of London had been, time out of mind, annexed to the mayoralty for the time being; and insinuating, that if the same should be conferred upon others, it would reflect upon the government and custom of the said city, which every freeman of the said city was by his oath of freedom bound to maintain to the uttermost of his power; which Petitions were so contrived, framed and published, on purpose to divert his majesty from assenting to the said ordinance, and to work a distraction in the said city, and to bring the parliament, city and whole kingdom into disorder and confusion. All which matters committed and done by the said sir Thomas Gardiner, were and are high crimes and misdemeanors, contrary to the laws of this realm, and in subversion of them, and contrary to the rights and privileges of parliament, the liberty and property of the subject, tending to sedition, and to the disturbance of the public peace of this realm.

And the said Commons by protestation saving to themselves, the liberty of exhibiting at any time hereafter any other Accusation or Impeachment against the said sir T. Gardiner, and also of replying to the Answers that the said sir T. Gardiner shall make unto the said Articles, or to any of them, and of offering further proof of the premisses, or any of them, or of any other impeachment or accusation that shall be exhibited by them, as the cause shall, according to the course of parliament, require, do pray that the said sir Thomas Gardiner may be put to answer all and every the premisses, and that such proceedings, trials, judgments and executions may be upon every of them had and used, as is agreeable to law and justice.

Nothing further relating to this Impeachment has been found.

167. Impeachment of HENRY HASTINGS, esq. (second Son to the Earl of Huntingdon) Sir RICHARD HALFORD, Sir JOHN BALE, and JOHN PATE, esq. for High Crimes and Misdemeanors : 18 CHARLES I. A. D. 1642. [Lords' Journals. 2 Cobb. Parl. Hist. 1407.]

July 8, 1642.

THE Commons, at a Conference, delivered to the Lords an Impeachment against Henry Hastings, esq. second son to the earl of Huntingdon, sir Richard Halford, sir John Bale, and John Pate, esq. for High Crimes and Misdemeanors; in which Impeachment the Commons desired the Lords to use all expedition. A Copy of which Articles were as follows :

“ The IMPEACHMENT of Henry Hastings, esq., (second son of the Earl of Huntingdon), sir Richard Halford, kt. and bart., sir John Bale, kt., and John Pate, esq., by the Commons assembled in Parliament, for High Crimes and Misdemeanors by them committed, as followeth :

“ Whereas, by order and command of the Lords and Commons in parliament, for the safety and defence of the county of Leicester, the magazine of the said county was delivered into the hands of Henry earl of Stamford, who, in June, 1642, removed a great part thereof to his dwelling-house, called Broadgate, in the said county, for the more safety and security thereof :

“ And whereas, in the said month of June, several Warrants is-sued out, by order of both houses of Parliament, the one directed to the gentleman usher of the house of peers, his deputy or deputies, the other to the serjeant at arms attending on this house, his deputy or deputies, for the apprehending of the said Henry Hastings, sir Richard Halford, sir John Bale, and John Pate, for High Crimes and Misdemeanors by them committed against the said houses of parliament, to answer the same before the said houses :

“ He the said Henry Hastings, sir Richard Halford, sir John Bale, and John Pate, well knowing the premises ; and the said sir Richard Halford, sir John Bale, and John Pate, being then and yet justices of the peace of the said county ; in or about the 22nd day of the said month of June, wickedly and maliciously, without warrant of law, did raise and draw out of the several counties of Derby, Lincoln, and Leicester, forces of horse and foot, to the number of 300 persons, or thereabouts, some of them being colliers, and other mean and desperate persons, and divers of them Papists, and them unlawfully assembled at Loughborough, in the said county of Leicester ; where the said Henry Hastings, the day aforesaid, made proclamation, That, if any persons affected to that service wanted arms, and would repair to the town's end, they should be furnished therewith ; and they, the said Henry Hastings, sir Richard

Halford, sir John Bale, and John Pate, together with the said other persons so assembled, being armed with swords and pikes, and with pistols, muskets, and calivers, ready charged with powder and bullets, and other habiliments of war, marched along in a warlike manner, with drums beating and colours flying, and their matches lighted, to the great terror and affrightment of his majesty's subjects, divers miles within the said county of Leicester, to the town of Leicester, and so through the said town, with great noise and shouting, to a certain place near to the said town, called Horse Faire Leases, to the intent to keep themselves from being arrested by the said officers of both houses of parliament, and, in case they should be so arrested, then to rescue themselves by force, and to the intent likewise to take away the said magazine by force and arms, and to kill and destroy the said earl of Stamford ; he the said Henry Hastings, and some other of his said complices, giving out that they would fetch away the said magazine with a vengeance, and that they would have the said earl's life before they left, and would fire his house, and have his heart's blood out, with divers other such like desperate speeches ; And the said Henry Hastings, sir Richard Halford, sir John Bale, and John Pate, with the rest of their said confederates, being so assembled at the said Horse Faire Leases, John Chambers and James Stamford, being authorized thereunto by deputations under the hands of the officers aforesaid, together with Archdale Palmer, esq., then high sheriff of the said county of Leicester, and divers other persons in their aid and assistance, repaired to the said place, to execute the said warrants from both houses of parliament ; and the said Henry Hastings, well knowing thereof, did then tell the said Chambers, that he knew he had warrants from the parliament as well for others as for himself ; whereupon the said Chambers produced the said warrants, and read the same openly, in the hearing of the said Henry Hastings, sir Richard Halford, sir John Bale, and John Pate, to yield obedience to the said warrants, which they refused to do ; but, instead thereof, they and other their said adherents did violently assault the said high sheriff, Chambers, and Stamford, and rode upon them with their horses ; and one of the said confederates, named Mr. Walter Hastings, with his pistol charged, gave fire upon the said Chambers ; and some others of them drew out their pistols, and presented their muskets, upon the said high sheriff and Chambers, using other force and violence upon them, to the great danger of their lives ; and so the said Henry

Hastings, sir Richard Halford, sir John Bale, and John Pate, by force and arms, and in a warlike manner, at the time and place aforesaid rescued themselves from the said officers and high sheriff, in contempt of justice, and to the high affront and scorn of the parliament, and afterwards marched back again in warlike manner into the said town of Leicester: All which doings of the said Henry Hastings, sir Richard Halford, sir John Bale, and John Pate, were and are contrary to the laws of this realm, the rights and privileges of parliament, tending to sedition, and to the danger of effusion of much blood:

"Wherefore the said Commons do, in the name of themselves and of all the Commons of England, impeach the said Henry Hastings, sir Richard Halford, sir John Bale, and John Pate, of the said several high crimes and misdemeanors.

"And the said Commons, by Protestation, saving to themselves now, and at all times hereafter, the liberty of exhibiting of any other Accusation or Impeachment against the said Henry Hastings, sir Richard Halford, sir John

Bale, and John Pate, or any of them, and of replying to the Answers which they, or any of them, shall make, or of offering any proofs of the premises, or any of them, or of any other Accusation or Impeachment against them, or any of them, as the case, according to the course of justice, shall require; do pray, that he the said Henry Hastings, sir Richard Halford, sir John Bale, and John Pate, and every of them, may be forthwith put to answer the premises, in presence of the Commons; and that such proceedings, examinations, trials, and judgments, may be upon them, and every of them, had and used, as shall be agreeable to law and justice."

Ordered, That the aforesaid Gentlemen should appear before the House, at a time prefixed, to hear the Impeachment read, and to put in their Answers to it.

It has not been found, that the parties impeached put in any Answer to these Charges, or appeared before the House respecting them; or that any farther proceedings were had in the matter.

## 168. Impeachment of JAMES Lord STRANGE, for High Treason: 18 CHARLES I. A. D. 1642. [4 Rushworth, 680. 2 Cobb. Parl. Hist. 1466.]

THE Lord Strange, son to the earl of Derby, was made by the king Lord-Lieutenant of Lancashire and Cheshire, and vigorously endeavoured to put the Commission of Array in execution, but met with great opposition from sir Thomas Stanly, Mr. Holland, Mr. Holcraft, Mr. Egerton, and Mr. Booth: as also by Mr. Ashton and Mr. Moor, both members of the house of commons. On the 15th of July 1642, the said lord Strange made an attempt to gain Manchester, but was repulsed; yet one man by name Richard Percival, was slain by my lord's forces (which some say\* was the first blood drawn in those unhappy wars.) Upon which on the 14th of September 1642 the House of Commons caused the said lord Strange to be impeached, as followeth:

**The Impeachment of JAMES, Lord STRANGE, and son and heir apparent of William Earl of Derby;** by the Commons assembled in Parliament, in the name of themselves and all the Commons of England, of High-Treason.

"That the said James, lord Strange, to the intent and purpose to subvert the fundamental laws

\* May (B. 2, c. 6.) says, "This Lord was not at all fortunate in service against the Parliament, who not long after returned again with a great force, consisting of 3,000 men, to the town of Manchester, where after he had sharply besieged it for the space of two whole weeks, he was at last quite beaten with the loss of many of his men."

and government of this kingdom of England; and the rights and liberties, and very being of parliaments: and to set sedition between the king and his people, did upon the 15th day of July, in this present year of our Lord God; 1642, at Manchester in the county of Lancaster, and at several other times and places, actually, maliciously, rebelliously and traiterously, summon and call together great numbers of his majesty's subjects; and incite, persuade, and encourage them to take up arms, and levy war against the king, parliament, and kingdom; That the said James, lord Strange, in further prosecution of his fore-said wicked, traiterous, and malicious purposes, did upon the said 15th day of July, at Manchester aforesaid, and at several other times and places, actually, maliciously, rebelliously and traiterously, raise great forces of men and horse, and levied war against the king, parliament and kingdom. And in further prosecution of the aforesaid wicked, traiterous and malicious purposes, the said James, lord Strange, and divers other persons whom he had drawn into his party and faction, did also, upon the said 15th day of July, at Manchester aforesaid, maliciously and traiterously, with force and arms, and in an hostile and warlike manner, kill, murder and destroy Richard Percival of Kirkman-Shalme in the said county of Lancaster, linen-webster; and did then, and at divers other times and places, in like hostile manner as aforesaid shoot, stab, hurt and wound divers others of his majesty's good subjects, contrary to the laws and peace of this kingdom of England, and contrary to his

majesty's royal crown and dignity: And the said James, lord Strange, hath set sedition between the king and his people, and now is in open and actual rebellion against the king, parliament and kingdom: for which matters and things, the knights, citizens and burgesses of the house of commons in parliament assembled, do, in the name of themselves, and of all the commons of England, impeach the said James, lord Strange, of High-Treason.

"And the said Commons, by protestation saving to themselves the liberty of exhibiting at any time hereafter any other Accusation or Impeachment against the said lord Strange, and also to replying of the Answers, that the said James lord Strange shall make to the premises, or any of them, or of any other Impeachment or Accusation that shall be exhibited by them, as the cause, according to the course and proceedings of parliament, shall require, do pray, that the said James lord Strange may be put to answer all and every the premises, that such proceedings, examinations, trials and judgments, may be upon them, and every one of them, had and used as shall be agreeable to law and justice."

Ordered by the Lords, That the Answer to be returned to the House of Commons shall be, That this House hath received the Impeachment against the lord Strange; and that they will take the best course they can to have the lord Strange brought to answer the said Impeachment.

The Lords taking into consideration what course to take for sending to summon the lord Strange to appear, and answer his Impeachment of High Treason: and considering that, if messengers be sent they will be imprisoned, and if proclamation-writs be sent down they

will not be sealed; therefore they thought fit to communicate this to the House of Commons, to advise in this case how Delinquents may be brought up to Trial: A Message was accordingly sent, to desire a Conference with the Commons, concerning the Impeachment of the lord Strange.

The following Order was made, in the nature of a Proclamation, against the lord Strange, to be printed and published in all churches and chapels, and all market towns, viz.

September 16, 1642.

"Whereas the lord Strange having continued a long time, and still remaining in actual rebellion against his majesty and the parliament, is for the same impeached of high-treason by the house of commons, in the name of themselves, and all the commons of England: It is therefore ordered, by the lords and commons in parliament assembled, that publication thereof be made in all churches and chapels, by the curates and church-wardens thereof; and in all markets and towns, by the constables and officers of the towns within the counties of Lancaster and Chester, to the end that all his majesty's loving subjects may have notice thereof; lest they being deceived by the specious pretences made by the said lord Strange should assist him with men, money, munition, or any other provision, and so make themselves guilty of the like treason and rebellion: And all sheriffs, and other his majesty's subjects, are hereby required to do their best endeavour for the apprehension of the said lord, and the bringing him up to the parliament, there to receive condign punishment according to his demerits."

Nothing further occurs respecting this prosecution.

169. Proceedings against the NINE LORDS at York; namely, SPENCER Earl of NORTHAMPTON, WILLIAM Earl of DEVONSHIRE, HENRY Earl of DOVER, HENRY Earl of MONMOUTH, CHARLES Lord HOWARD of Charlton, ROBERT Lord RICH, CHARLES Lord GREY of Ruthen, THOMAS Lord COVENTRY, and ARTHUR Lord CAPEL, for High Crimes and Misdemeanors: 18 CHARLES I. A. D. 1642. [4 Rushw. Coll. 737. 2 Cobb. Parl. Hist. 1296.]

ON May 25, 1642, the Lords took notice of several of their House being absent on the King's Letters to attend him at York; and judging it contrary to the privileges of that House, resolved to consider what course was fit to be taken with these Deserters. Hereupon it was ordered, "That the Lords gone to York, or other places, contrary to a former Order of this House, shall be sent for, and taken into custody, to answer their Contempt done to this House; and, in case they refuse to come, then the House would give Judgment against them

for the same." The lords North and Brooke were appointed to put down the names of such peers as were absent without leave, &c. This was done accordingly.

On May 30, Mr. Pickering, a messenger, declared upon oath what Lords he saw at York, and what he met going thither; on which it was ordered, That the said Lords should be sent for to appear here, on the 8th of June next, or else the house would proceed to give Judgment against them for their offence.

June 7.

A Letter directed to the Speaker of the house of lords, was read as follows:

"My Lord; We, whose names are under-written, have received a Summons, dated the 30th day of May, to appear, the 8th of June, at the bar of the House of Peers; we are come here to York, at this time, to pay a willing obedience to his majesty's commands, signified by letter under his hand, which commands remain upon us still; and so we rest Your lordships affectionate servants,

NORTHAMPTON,	GREY OF RUTHIN;
WILL. DEVONSHIRE,	C. HOWARD,
MONMOUTH,	THO. COVENTRY,
R. RICH,	ARTHUR CAPEL,
HEN. DOVER,	York, June 5, 1642."

Ordered, That this Letter be taken into consideration to-morrow; and that all the lords in town have notice to be present.

June 8.

This day, the Lords took into consideration the Letter from the Nine Peers at York, and agreed upon a Conference with the other House about it, expressing their sense of the matter in the following manner:

"The Lords having received a Letter from diverse of their Members, who have withdrawn themselves from their attendance in Parliament, contrary to the express Orders and commands of this House; though this affront be to their own House, and by their own Members, yet, as it concerns the safety of the kingdom, and the very being of parliament, in the consequence of it, the Lords, in that respect, thought it fit to communicate it to the Commons; that both Houses may, jointly, endeavour to prevent such practices and designs as, by the Malignant Party and the ill-affected members of both houses, may be undertaken, to the Dissolution of the Parliament, unvalidating the acts and authority thereof, or raising a power in opposition thereunto; which the Lords cannot but conceive those lords are encouraged unto by the counsels now prevailing, and the forces now raising at York; otherwise it is not imaginable, after a Vote passed by both Houses, That it appeared the king, seduced by wicked counsel, intended to make war against his parliament, they would have taken the boldness to have left the house, in contempt of the command thereof, and have gone to York; and, being summoned to appear, would have remained there notwithstanding, and have returned so slight and scornful an answer."

June 10.

Mr. Hollis having reported to the House of Commons the opinion of the Lords concerning the Letter from the Nine Peers at York, a motion was made,

"That the departing of these Nine Lords, from the Parliament, without leave, after such time as both Houses had declared, that the king, seduced by wicked counsel, intended to make war against the Parliament; and their

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still continuing at York, notwithstanding their summons and commands, is a high affront and Contempt of both houses: and that the said Lords therein did as much as in them lay, that the service of Parliament might be deserted; and are justly suspected to promote a war against the Parliament."

The previous question being put, it was carried in the affirmative by 109 voices against 51. The Tellers on this remarkable occasion were, for the Yeas, Mr. Hollis and Mr. Cromwell; for the Noes, Mr. Waller and Mr. White. Then it was resolved, That a committee be appointed to draw up an Impeachment against the said Nine Peers.

June 16.

A Message was brought from the Commons by Mr. Denzil Hollis, containing an Impeachment against the Nine Lords who had written and signed the Letter from York; which he introduced with the following Speech: \*

"My Lords; By the command of the knights, citizens, and burgesses of the house of commons, I come hither unto your lordships in the behalf of the parliament; or rather in the behalf of the whole kingdom, labouring with much distraction, many fears, great apprehensions of evil and mischief intended against it; and now hatching and preparing by that Malignant Party, which thirsts after the destruction of religion, laws, and liberty; all which are folded up, cherished, and preserved in the careful bosom of the parliament.

"My lords, the parliament is the foundation and basis of government, and consequently of the peace and happiness of the kingdom. As it creates the law by which we are ruled and governed in peace and quietness, so it preserves the law in power and authority: it watches over our religion, that it be not supplanted and changed by superstitious innovations; the truth and substance of it eaten up with formality, vain pomp, and unnecessary ceremonies; the gross errors of Popery and Arminianism imposed upon us, as the doctrine of our church; a way opened to all licentiousness; and occasion, hereby, taken to oppress and persecute all religious and conscientious men that shall oppose these proceedings, as hath been used of late. It is the conservative of the rights and liberties of the subject, and the corrective of injustice and oppression; whereby equal right is distributed to all, and every man hath that benefit and protection of justice, which is due unto him. It is that by which alone common necessities can be provided for, and public fears prevented: so that I may say, not only the

\* This Speech was ordered by the Commons to be printed; and by such only as Mr. Hollis should appoint: accordingly we find, in the title thereof, this Imprimatur: 'I appoint that none shall print this but Thomas Underhill. Denzil Hollis.' This gave occasion to the king, in one of his Declarations, afterwards, to style Mr. Hollis a Monopolist.

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peace, happiness, and well-being, but the very being of this kingdom, can have no other bottom to stand upon but the parliament, it being the foundation upon which the whole frame of the commonwealth is built.

"Therefore those who would destroy the building, apply themselves to undermine the foundation. If they can take away parliaments, or but weaken the power and authority of parliament, which is all one, (for if it once have no power, it will soon have no being) they know then all will be at their mercy, nothing will stand in their way to oppose them; but a flood of violence will run over and cover the whole surface of the kingdom, and carry away all, both present enjoyment, and future hope of religion, liberty, and whatsoever else is precious and dear unto us. And, accordingly, it hath ever been the policy of evil counsellors (who are the greatest enemies we have in the world, or can have) to strike at parliaments, keep off parliaments, break parliaments, or divide parliaments, by making factions, casting in diversions and obstructions, to hinder and interrupt the proceedings of parliament: all against the parliament. Your lordships have had experience of this truth in this parliament; a succession of designs upon it: first to awe it, and take away the freedom of it by the terror of an army; then to bring force against it, actually to assault it, and, with the sword, cut in sunder this only band, which ties and knits up king and people, the people among themselves, and the whole frame of this government, in one firm, and, I hope, indissoluble, knot of peace and unity.

"God diverted those designs, and did blow upon them; presently another is set upon, which was to obstruct and hinder our proceedings, that, in the mean time, the flame of rebellion might consume the kingdom of Ireland; and distempers, distractions and jealousies be fomented here at home, to tear out the bowels of this kingdom; the parliament being disabled from helping it, by occasion of so many diversions, so much business cut out unto it, many obstructions and difficulties; especially that great one from which all the rest receive countenance and support, his majesty's absenting himself, and not concurring with us; thus withdrawing both his presence and influence; by which means such remedies could not be applied as were necessary; and what was done, was done with infinite trouble to the parliament, and excessive charge to the subject, double, treble, what otherwise would have served the turn: so the subject is grieved and oppressed with charge, and the blame of all is laid upon the parliament; and the parliament unjustly said to be the cause of all those evils, which the authors of them had made so great; and so confirmed and secured by the frequent interruptions of the parliament, that they could not suddenly, nor easily, be suppressed or removed.

"Well, but, by God's infinite blessing, the parliament was in a fair possibility to wade

through this likewise; and though the night had been black and stormy, some day began to appear: miraculously our arms have prospered in Ireland, and, God be praised, the malevolent practices of these vipers at home, as they appeared, were in some sort mastered; and the parliament began to act and operate towards the settling of the great affairs both of church and state, and providing for the defence and safety of this kingdom, against either foreign invasion, or any stirring of the disaffected party among themselves. Then three ways are together essayed for the weakening and invalidating the proceedings and power of the parliament, and making way for the utter subversion of it. One, Force is gathered together at York, under pretence of a Guard for his majesty's person, to make an opposition against the parliament; and, by a strong hand, to support and protect delinquents, so as no order of parliament can be obeyed, but on the other side slighted and scorned; so to make the parliament of no reputation, to be but '*Imago Parliamenti*,' a mere shadow, without substance, without efficacy. Another, To send out, in his majesty's name, (and as Declarations and Messages from him) bitter invectives against the parliament, to perplex it, and engage it, in the expence of time, to answer them; and beside, cunningly to insinuate and infuse into the people, by false colours and glosses, a disposition and dislike of the parliament; and, if it be possible, to stir up their spirits to rise against it, to destroy it, (and, in it, all other parliaments) to the ruin of themselves, their wives and children. The third Plot, is, The members are drawn away, and persuaded to forsake their duty and attendance here, and go down to York; thereby to blemish the actions of both houses, as done by a few and considerable number, and rather a party than a parliament; and, perhaps, to raise and set up an anti-parliament there.

"My Lords, this is now the great design whereby they hope, by little and little, the parliament shall even bleed to death, and moulder to nothing, the members droppung away, one after another; a desperate and dangerous practice, and as your lordships well observed (when you were pleased to communicate this business to us) an effect of the evil counsels now prevailing, and tending to the dissolution of the parliament: of this parliament, which, under God, must be the preserver of three kingdoms, and keep them firm and loyal to their king, subject to his crown, save them from being turned into a chaos of disorder and confusion, and made a dismal spectacle of misery and desolation: this parliament, which is the last hope of the long-oppressed, and in other countries, even almost wholly destroyed, Protestant religion: this parliament, which is the only means to continue us to be a nation of freemen, and not slaves, to be owners of any thing; that we may call our wives, our children, our estates, nay our bodies our own: in a word, which must stand in the gap to prevent

an inlet and inundation of all misery and confusion.

“My lords, this parliament they desire to destroy; but I hope it will destroy the destroyers, and be a wall of fire to consume them as it is a wall of brass to us, to defend king and kingdom, us, and all we have. Your lordships wisely foresaw this mischief, and as wisely have endeavoured to prevent it, by making your Orders, to keep your members here; as that of the 9th of April, and several other Orders enjoining them all to attend; thereby restraining them from repairing to York, where the clouds were observed to gather so fast, and threaten a storm, and such preparations to be made against the parliament that it necessitated both houses to pass a vote:—‘That the king, seduced by wicked Counsel, intended to make war against the parliament; and all who shall serve, or assist, in such wars, are declared to be traitors,’ which Vote passed the 20th of May; so setting a mark upon that place, and declaring their opinion concerning those who should at this time resort thither.—Yet now, in such a conjuncture of time, when the kingdom had never more need of a parliament, and the Parliament never more need of all the help and assistance of the best endeavour and advice of every member; the safety, and even the being, of the three kingdoms depending upon it; after such Orders and commands of your lordships house to the contrary; such a Vote of both houses; and expressly against their duty, being called thither by writ, under the Great Seal; which is the king’s greatest and highest command, and not controulable, nor to be dispensed with, by any other command from him whatsoever; and called to treat and consult *de arduis regni*, the great, urgent, and pressing affairs of the kingdom, never more urgent, never more pressing: notwithstanding all this, these lords, the earls of Northampton, Devonshire, Dover, and Monmouth, the lords Andover, Rich, Grey, Coventry, and Capel, have left their stations, withdrawn themselves, and are gone to York; and being summoned to appear by an Order of the 30th of May, instead of obedience, return a refusal, by a slighting and scornful Letter, which hath been so adjudged both by your lordships and the house of commons.

“My lords, the house of Commons hath likewise, upon the consideration and debate of this business, finding it so much to concern the safety of the kingdom and the very being of the parliament, passed this Vote:—‘That the Departing of these Nine Lords from the parliament, without leave, after such time as both houses had declared, That the king, seduced by wicked counsel, intended to make war against the parliament; and their still continuing at York, notwithstanding their summons and command, is a high affront and contempt of both houses; and that the said lords, therein, did as much as in them lay, that the service of the parliament might be deserted, and are justly suspected to promote a war against the

parliament.’—And the house, in further prosecution of their duty in this particular, and in pursuance of their Protestation, which obliges them to endeavour to bring to condign punishment all such high offenders against not only the privileges, but the very essence of parliament, have sent me up to impeach these Lords, and desire that speedy and exemplary justice may be done upon them.

“And, accordingly, I do here, in the name of the knights, citizens and burgesses of the Commons house assembled in parliament, and in the name of all the Commons of England, impeach Spencer earl of Northampton, William earl of Devonshire, Henry earl of Dover, Henry earl of Monmouth, Charles lord Howard of Charlton, Robert lord Rich, Charles lord Grey of Ruthen, Thomas lord Coventry, and Arthur lord Capel, for these high Crimes and Misdemeanors following, viz. For that contrary to their duty, they being peers of the realm, and summoned by writ to attend the parliament; and contrary to an Order of the house of peers of the 9th of April last, and several other Orders, requiring the attendance of the members of that house; and after a Vote passed in both houses the 20th of May last, ‘That the king, seduced by wicked counsel, intended to make war against the parliament, and that whosoever served or assisted him in that war, was adjudged a Traitor;’ did notwithstanding, afterwards, in the same month of May, contemptuously, having notice of the said Votes and Orders, withdraw themselves from the said house of peers, and repair to the city of York; where the preparations of the said war were, and yet are, in contrivance and agitation, they knowing of such preparations; and being, by an Order of the 30th May, duly summoned by the house of peers, to make their appearance before that house upon the 8th day of June instant, they refused to appear; and returned a scornful answer, by a Letter under their hands directed to the Speaker of the lords house, and remaining there upon record. For which Crimes and Misdemeanors, to the interruption of the proceedings of parliament and great affairs of the kingdom: tending to the dissolution of the parliament, and disturbance of the peace of the kingdom; I am commanded, in the name of the said Commons, to demand of your lordships, That the said Lords may be forthwith put to their Answer, and receive speedy and exemplary punishment, according to their demerits: The Commons saving to themselves liberty, at all times hereafter, to exhibit any other or further Impeachment or Accusation against the said Lords, or any of them.”

Ordered, That the impeached Lords should have notice to answer in 16 days time. And both the houses agreed to recal their joint committee which they had sent to the king at York.

The Sentence against the Lords that went to York.

Upon this Impeachment they afterwards passed this Judgment, viz.

July 20.

The Commons with their Speaker came this day to the bar, and demanded Judgment in their own names and in the names of all the Commons of England, against Spencer earl of Northampton, William earl of Devonshire, Henry earl of Dover, Henry earl of Monmouth, Charles lord Howard of Charlton, Robert lord Rich, Charles lord Grey of Ruthen, Thomas lord Coventry, Arthur lord Capel (members of this house) formerly impeached by them before the Lords in parliament.

At which time, the Lords being in their robes, the lord Kimbolton, Speaker *pro tempore*, pronounced the Sentence against the said Nine Lords, viz.

“Whereas Spencer earl of Northampton, William earl of Devonshire, Henry earl of Dover, Henry earl of Monmouth, Charles lord Howard of Charlton, Robert lord Rich, Charles lord Gray of Ruthen, Thomas lord Coventry, and Arthur lord Capel, were the 16th of June 1642, impeached by the knights, citizens and burgesses of the house of commons for these high crimes and misdemeanors following, viz. For that, contrary to their duty, they being peers of the realm, and summoned by writ to attend the parliament; and contrary to an Order of the house of peers of the 9th of April last, and several other Orders requiring the attendance of the members of that house, and after a Vote passed in both houses the 20th of May last, That the king, seduced by wicked counsel, intended to make war against the parliament; and that whosoever served or assisted him in that war, was adjudged a traitor, did notwithstanding afterwards in the same month of May contemptuously, having notice of the said Votes and Orders, withdraw themselves from the said house of peers, and repair to the city of York, where the preparations of the said war were, and yet are in contrivance and agitation, they knowing of such preparations: And being by an Order of the 30th of May duly summoned by the house of peers, to make their appearance before that house upon the 8th day of June last past, they refused to appear, and returned a slighting and scornful Answer by a Letter under their hands, directed to the Speaker of the lords house, and remaining there upon

record. For which crimes and misdemeanors to the interruption of the proceedings of parliament, and great affairs of the kingdom, and tending to the dissolution of the parliament, and disturbance of the peace of the kingdom. The said knights citizens and burgesses do demand, That the said Spencer earl of Northampton, William earl of Devonshire, Henry earl of Dover, Henry earl of Monmouth, Charles lord Howard of Charlton, Robert lord Rich, Charles lord Grey of Ruthen, Thomas lord Coventry, and Arthur lord Capel, should be put to their answers, and receive exemplary punishment, according to their demerits. And whereas it was ordered upon the said 16th of June, That the said Spencer earl of Northampton, William earl of Devonshire, Henry earl of Dover, Henry earl of Monmouth, Charles lord Howard of Charlton, Robert lord Rich, Charles lord Grey of Ruthen, Thomas lord Coventry, and Arthur lord Capel, should appear before the lords in parliament, and make their several answers before their lordships on Monday the 27th of the said June to the said Impeachment, or else this house would proceed to Judgment against them by default. And whereas the said Spencer earl of Northampton, William earl of Devonshire, Henry earl of Dover, Henry earl of Monmouth, Charles lord Howard of Charlton, Robert lord Rich, Charles lord Grey of Ruthen, Thomas lord Coventry, and Arthur lord Capel, in contempt of this high court, have refused to appear and make answer to the said Impeachment.:

“The lords having taken the said Charge into their due consideration, do find the said Spencer earl of Northampton, William earl of Devonshire, Henry earl of Dover, Henry earl of Monmouth, Charles lord Howard of Charlton, Robert lord Rich, Charles lord Grey of Ruthen, Thomas lord Coventry, Arthur lord Capel, guilty of the crimes charged as aforesaid. And thereupon, and for their said contempt, this high court doth award and adjudge, 1. That Spencer earl of Northampton, William earl of Devonshire, Henry earl of Dover, Henry earl of Monmouth, Charles lord Howard of Charlton, Robert lord Rich, Charles lord Grey of Ruthen, Thomas lord Coventry, Arthur lord Capel, shall not sit or vote in the lords house during this present parliament. 2. That they shall not enjoy the privilege of parliament as members of parliament. 3. That they shall stand committed to the Tower during the pleasure of this house.”

170. The Trial of Colonel NATHANAEL FIENNES,\* before a Council of War at St. Albans, for cowardly surrendering the City and Castle of Bristol: 19 CHARLES I. A. D. 1643. [Taken out of the Account given thereof by Mr. Prynn and Mr. Walker.]

COLONEL Fiennes having been taxed with a cowardly Surrender of Bristol, thought proper to justify himself by a set Speech in the House of Commons, and also by a printed Relation of the fact, in both which he desired that the affair might be examined in a Council of War, for which purpose he obtained an Order of the House. To this Relation Mr. Walker published an Answer, and Mr. Prynn, in a Book intitled "Rome's Masterpiece," stiles this action, "the most cowardly and unworthy Surrender of Bristol."

Hereupon Mr. Prynn and Mr. Walker were summoned to the Council of War, to make good what they had alledged against Colonel Fiennes. Mr. Prynn and Mr. Walker being thus made parties, petitioned his excellency the Lord General (earl of Essex) to appoint a proper time and place within London or Westminster for the Trial and Examination of this affair: They also drew up Articles of Impeachment against Col. Fiennes, and presented them, together with a Petition, to the House of Commons, who upon reading the Petition came to the following Resolutions:

Die Mercurii 15 Novembris 1643.

"The humble Petition of Clement Walker and William Prynn, esquires, concerning Mr. Nathanael Fiennes, and the Surrender of Bristol, was this day read in the House of Commons; and Articles of Accusation of the said Mr. Fiennes touching the Surrender of the said City of Bristol, and Castle, were this day likewise presented to the said House. A Letter from Mr. Prynn to Mr. Nathanael Fiennes was likewise read.

"Ordered by the House of Commons, That as they shall be careful that there shall be a fair and equal Trial of Mr. Nathanael Fiennes, so they will take the Petition of the Petitioners, and the Articles, after the Trial, into consideration inasmuch as it shall concern my Lord General and the Council of War, and as it shall concern the privilege of parliament.

"Resolved, &c. That the Articles, entitled, 'Articles of Accusation and Impeachment against colonel Nathanael Fiennes, late governor of the City and Castle of Bristol, touching the dishonourable Surrender thereof to the Enemy, contrary to his trust and duty, by Clement Walker, and William Prynn esquires,' shall be now read. The said Articles and Impeachment were accordingly read.

"The Petition and Articles were signed 'Clement Walker, and William Prynn;' and

they were both called in, and at the bar being demanded, whether the Names subscribed were of their own hand-writing, did avow the names to be of their own hand-writing, and did avow the said Petition and Articles.

"Ordered that a Copy of these Articles, attested under the Clerk's hand, be forthwith sent to my Lord General.

H. ELSYNGE Cler. Parl. D. Com."

Soon after these Resolutions, viz. on Thursday December 14, came on the Trial before the Council of War at St. Albans.

The Council being assembled in a room adjoining to the Town-hall, Mr. Prynn and Mr. Walker appeared there, when Dr. Dorislaus, Judge-Advocate of the Army, there demanded of them, whether they had any Articles of Impeachment drawn against Colonel Fiennes? To which Mr. Prynn replied, That he being a member of the House of Commons, they had exhibited their Articles to that house, who by Order had sent a Copy of them to his Excellency, upon which they were to proceed. Which the Advocate thereupon acknowledging, my lord Roberts, President of the Council of War, commanded him to read the said Order and Articles sent together with it. As soon as the Order was read, Mr. Prynn tendered a Copy of the Articles of Impeachment under Mr. Walker's and his own hands, agreeing with those delivered to the house, which he averred they were there ready to make good in each particular; desiring the Council to proceed upon them, because the other was but a copy which they had not subscribed, but this they now tendered an original; which was assented to.

Upon this Dr. Dorislaus the Judge-Advocate was commanded to read the Articles; but Mr. Prynn then perceiving the doors kept close, contrary to expectation, and all persons, auditors, but themselves alone, excluded; and fearing that by this means a door would be opened to misreport the Proceedings of this Trial, before the reading of the Articles made this request to the Council, that this hearing might be as public as the cause itself, and as that place could afford, the door set open, and none excluded; the rather, because himself and Mr. Walker (being no challengers, but challenged) were engaged in this prosecution, not in their own particular interests but the Republic's, and that by special Order of Parliament (the representative body of the kingdom) which had ordered 'a fair and equal Trial,' which they humbly conceived to be a free and open one, agreeable to the proceedings of parliament, and all other courts of jus-

\* See Rush. Col. vol. 3, p. 153, 284, Clar. Hist. vol. 2, p. 315.

tice in the realm; which stand open to all, and from whence no auditors are or ought to be excluded.

Colonel *Fiennes* opposing this motion, alledged, That we suspected the integrity of that court, as appeared by this request for an open Trial, and our endeavours to appeal therefrom by several Petitions to the parliament, for a Trial before the house in London or Westminster: whereas he had cast himself freely and clearly upon their justice, (which he no ways suspected) to whom the cognizance of such causes properly belonged; and therefore desired the hearing might be private, according to the proceedings used in such courts. Upon which Dr. *Dorilaus*, Judge-Advocate, intervening, told the Prosecutors and Council that it was against the Stile and Course of a Court Martial to be public and open: therefore it might not be admitted upon any terms.

To which Mr. *Prynn* replied, That he no ways distrusted the justice or integrity of this honourable Council, for then he would not have appeared before them at this place and time to crave justice from them: That he was a common lawyer, and by his profession, his late Protestation, and Solemn Covenant, bound to maintain the fundamental laws of the Kingdom and Liberty of the Subject: That the members of this honourable Council, as well as himself, had not only taken the like solemn Protestation and Covenant, but also put themselves in arms, to maintain and defend the said Laws and Liberties of the Subject to the uttermost: That by the Laws and Statutes of the realm, all courts of justice ever have been, are, and ought to be held openly and publicly, not close like a Cabinet-Council; witness all courts of Justice at Westminster, and elsewhere, yea, all our Assizes and Sessions, wherein men, though indicted but for a private felony, murder, or trespass, (which nothing near concerns the republic so highly as this dishonourable Surrender of Bristol) have always open trials: And if such petty causes, then much more this of most general concernment to the whole realm, recommended to 'a fair trial,' by the Parliament itself, ought to be as open and public as possible, to satisfy both the parliament and people: That not only in courts of Common Law, but in the admiralty itself, and all other courts, proceeding by the rules either of the civil or canon law, the proceedings have ever been public, the courts open. And even in late proceedings by martial law before a Council of War, the Trials of Delinquents in England have been public, as appears by the Trials of Yeomans and Butcher at Bristol, before Colonel *Fiennes* himself, which were public; and by the Trial of Mr. *Tomkins*, *Challoner*, and others since, before a Council of War at the Guild-Hall of London, in the presence of both houses of parliament and the whole city, no comers being thence excluded. Wherefore this case being of the same public nature, and as much or more concerning the

kingdom as theirs, ought to receive as public a Trial as theirs did.

To which *Dorilaus* answered, That himself protested against the open Trial of *Tomkins* and *Challoner*, as a breach upon the Council of War's privileges, but was over-ruled therein, to give the parliament and city content: adding, that all councils of war in foreign parts were ever private, and ours now used not to be guided by common or statute laws, or the course of other courts, but by their own orders; and this being a Council, it was against the nature and constitution of it to be public.

To which Mr. *Prynn* rejoined: First, That there was as great cause to give the parliament, city, and kingdom satisfaction, in this, as in the other fore-named case, it being of as public concernment. Next, That we of England are not to be guided by foreign laws or precedents, but by our own domestic: That the common law, the statutes of the realm, and constant practice of all our other courts of justice, ought to regulate the proceedings of the Council of War, not the Council of War's to repeal and controul them: especially in an army which hath taken up arms, which are waged by the Parliament of purpose to defend the fundamental Laws and Subjects Liberties, not to thwart them: That it was both against the Laws and Subjects Liberty (as he humbly conceived) to deny any prosecutor or subject an open trial, and thus to chamber up or restrain justice *intra privatos parietes*, in any, much more in this public cause. That the Judge-Advocate could produce no one precedent for such a close Trial within our realm in any former age; and therefore he should make no such new precedent now. That all Cases of this nature touching the cowardly Surrendering of Towns and Castles, were in former times, tried only in full parliament, as appears by the cases of *Gomines*, *Weston*, the bishop of *Norwich*, and others, and that upon very good reason: since cases, which concern all, are fittest to be determined in that highest court which represents all the realm. That this Council of War had a double capacity and consideration; First, as a Council of War only, to deliberate of things necessary for the regulating and managing of military affairs; and in this regard it ought to be secret in all such debates, and not communicate their councils: But in this capacity we were not now before it. Secondly, as a Court of Justice, to proceed criminally against malefactors; and in this respect it ought (as he believed) to be public and open to all comers. To put this out of doubt, he would instance only in one example: The high court of parliament is both the supremest great general council for peace and war, and the highest court of justice in the realm: as it is a Council to consult, debate, or deliberate of the military or civil affairs of the kingdom, so it is always private, none but the members and officers of either house being admitted to their consultations or debates. But as it is a Court of Justice to punish malefactors, so the proceedings

of both or either house are always open and public; as appears by the late Trial of the earl of Strafford in Westminster-Hall, and infinite other precedents of antient and present times. If then this supremest Council of all others, as it is a court of justice, stands ever open unto all, and the proceedings of it be always public, without any infringement of its privileges as a supreme Council of War and Peace; then certainly this honourable Council of War (inferior to it both in power and jurisdiction) as it is now a Court of Justice, may and ought to hold their proceedings and sessions publicly in this common cause, without any violation of its privileges as a Council. What therefore the peers in parliament once answered the prelates in a case of Bastardy, he hoped this honourable Council would now answer the Advocate in this Case of our Impeachment. 'Nolumus leges Angliæ mutare, quæ hucusque usitatæ sunt et approbatæ\*:' and so allow us a public Trial, to satisfy both the Parliament and people, whose eyes are fixed on it; else, if it should be private, they would be apt to report, 'it was huddled up in a corner.' For which innocent expression, as we intended it, (St. Albans and this Council, in respect of London and the Parliament being but a Corner) so much exception was taken in the house against our Petition. In fine, he alledged, That colonel Fiennes himself, who had made such public professions of his innocency, both before the House of Commons, his Excellency, and the world, in printed Speeches, Relations, and Letters, had most cause to desire, and least reason to decline an open trial, 'since truth and innocency seek no Corners.' And his honour, his honesty now openly charged, could not otherwise than openly be discharged; no Trial being public enough for him who presumes his innocency able to endure, and professeth a desire to bring it to the touch, that it may be cleared. And if he should now decline an open Trial, after so many public bravadoes in London and elsewhere, it would draw upon him a just suspicion of guilt in most mens opinions, since no man 'fleeth the light but he whose works are evil.'

Upon this, the lord Roberts demanded of Mr. Prynne, what he meant by a public Trial? Whether only the reading of the Articles, Answers, producing of Witnesses, and managing the Evidence to make good the Articles; or else, the council's private debates of the cause among themselves, after the hearing?

To which Mr. Prynne replied, That he meant only the former of these, the Judges debates many times in cases of difficulty being private after hearings, till they come to deliver their Resolutions in public.—Hereupon all were commanded to withdraw; and then one of the Council, after a short Debate, was sent to his Excellency to know his pleasure, whether the Trial should be public, as the prosecutors desired, or private? Who returned answer, that it should

be private; with which Resolution the prosecutors (being called in) were acquainted.

Mr. Prynne upon this Answer desired, that he might put in writing the Reasons he had suddenly offered to the Council for an open Trial, that so they might be presented to his Excellency; for that, as he conceived, he had not been made acquainted with them, who upon consideration of them, might happily alter his Resolution.—Upon which motion, the Council ordered the Judge-Advocate and prosecutors to repair to his Excellency, to acquaint him with the former Reasons by word of mouth, which they did very briefly: But the Advocate informing his Excellency, that it was against the Privileges of the Council that the Trial should be open; he answered that he would not infringe the Privileges of the Council, whom he thought the prosecutors seemed to distrust by demanding a public Trial.

The manner of the Trial being thus settled, the Articles of Impeachment were first read, and then his Answer delivered in writing unto them.

**ARTICLES OF ACCUSATION AND IMPEACHMENT** against Colonel NATHANAEL FIENNES, late Governor of the City and Castle of Bristol, touching his dishonourable Surrender thereof to the Enemy, contrary to his Trust and Duty; exhibited by CLEMENT WALKER and WILLIAM PRYNNE, esqrs. in behalf of the Commonwealth of England.

1. *Imprimis*, That he, the said colonel Nathanael Fiennes, did suddenly apprehend, imprison, and remove colonel Thomas Essex, late Governor of the said City and Castle, from his government there, upon pretence that he intended to deliver up the same (not then fully fortified, or sufficiently provided to withstand any long siege) into the hands of the common Enemies of the kingdom and parliament, contrary to the trust reposed in him; and that hereupon, he, the said colonel Fiennes, obtained the Government of the said City and Castle for himself, and undertook to defend and keep the same, to the uttermost extremity, against the said Enemy, for the use of the King and Parliament, and not to surrender the said City and Castle, or either of them to the said Enemies, or to any other person whatsoever, without the previous consent, and order of the Parliament.

2. *Item*, That the said Colonel, soon after he became Governor of the said City and Castle, did, by martial law, apprehend, condemn, and execute some chief citizens thereof; namely, Mr. Yeomans, Mr. Butcher, and others, only for intending to deliver up the same to prince Rupert, when he came first before Bristol, (not then fully fortified and stored) though they did not actually surrender the same.

3. *Item*, That he, the said Colonel, did put the parliament, kingdom, country, and city to a vast expence, in fortifying and furnishing it, and the Castle thereof, with forts, sconces, can-

\* Stat. Merton 20 H. 3, c. 9.

nons, ammunition, arms, victuals, provisions of all sorts, and with garrisons sufficiently able to defend and maintain the same for three months space or more, against all the power of the enemies, that might or did come against the same; and did likewise promise and undertake to divers gentlemen and inhabitants thereof, to defend the same for so long space or more, in case they should be besieged.

4. *Item*, That he, the said Colonel, notwithstanding the premisses, when the enemy came before the said City and Castle, with no extraordinary forces or ammunition able to force the same, and besieged them not above three days at the most, did, before ever the enemy had taken any of the out-forts, or sconces about the same, or had made so much as the least battery or assault upon the walls of the said City or Castle, or any mine or breach into any of the forts thereof, contrary to his former trust, promises, duty, and the honour of a soldier, most dishonourably, cowardly, and traitorously delivered up the said City and Castle, with all the prisoners, cannons, ammunition, artillery, arms, military provisions, magazines, victuals therein, and the very colours too, without and against the consent of the Parliament, or his Excellency their general, into the hands and power of prince Rupert, and other common enemies of the Kingdom and Parliament, to the extraordinary great danger, dishonour, loss and prejudice of the whole Kingdom and Parliament, the evil example of other governors and towns, the loss of most of the Western Parts of England, and great encouraging, enriching and strengthening of the said enemies, both by land and sea; and that upon very dishonourable Articles, to which he was no ways necessitated, and had no care to see them punctually performed by the enemy, when complaint thereof was made to him for relief; to the great prejudice and impoverishing of the inhabitants and garrison-soldiers there.

5. *Item*, That the said Colonel, without the privity or consent of any general Council of War, did, of his own head, send out for a Parley with the enemy, when divers officers and soldiers advised and persuaded the contrary, and would have repulsed the enemy, and defended the said City and Castle to the utmost: that the surrendering up of the same was principally occasioned by the earnest persuasion, advice, and cowardice of the said Governor, contrary to his trust and duty to keep the same. And that the said Governor, when as the Council of War unanimously voted upon the Parley, that it was neither safe nor honourable for them to depart the town, unless they might march thence with half their arms at least, and with their colours; thereupon, after some private conference with colonel Gerrard, one of the enemy's Commissioners, in the garden, without the privity, and contrary to the Vote, of the said Council, did make and insert the last Article; that they should leave all their cannon and ammunition, with their arms and colours, behind them; and returning to them

out of the garden, told them plainly, that they must now deliver up all to the enemy, but what was expressed in the Articles he then produced, and leave their arms and colours behind them, to the said Council's and Soldiers great discontent. And whereas by those very Articles, the said Town and Castle were not to be delivered up till nine of the clock the next morning, nor the enemies to enter them till the soldiers, and other gentlemen were marched out; the said Governor was so over-hasty to surrender up the same, that he delivered them up to the enemy above one hour or more before the hour agreed on; and suffered the enemies to enter and possess them before the soldiers were marched out: whereby many of the soldiers were pillaged in the Castle and Town, and divers of the inhabitants best affected to the Parliament, were plundered before the hour of surrender came, to their great loss and undoing.

6. *Item*, That he the said Colonel, during the three days siege of the said City and Castle, did not give any such encouragement to the soldiers and officers (who bravely defended the same, and slew near 1,000 of the enemy's best men, by his own printed Relation, with the loss only of eight persons) as his duty and place required, and they expected, which much discouraged them: And that when a small number of the enemy, not 200 (who gave themselves for lost) had entered the Line of Communication at the weakest place, which was worst guarded, on Wednesday morning the 26th of July last, being bravely repulsed by the soldiers with great loss in all places else; he the said Colonel, for two hours space or more (during which time no more enemies entered or approached the said breach) both neglected and refused to command or encourage the officers and soldiers who offered to beat them out in due time, as he was advised and pressed to do by captain Bagnall, lieutenant-col. Davison, and divers others, who would have undertaken that service; and instead of encountering the said enemies (against whom the very women offered to go on with their children to dead the cannon, if the soldiers were afraid, rather than the City and Castle should be yielded) called off the soldiers and officers from the line and out-works, that the enemy might the better enter them without resistance, upon pain of death, much against their wills, who should and would have hindered and repulsed the enemies; and discouraged and hindered such as were forwards to have cut them off, sounding a parley when the enemy were so beaten, that they threw down their arms and cried for quarter: inso-much that divers of the soldiers and inhabitants cried out they were betrayed, and some of the soldiers brake their arms in discontent, swearing they would serve the Parliament no more.

7. *Item*, That the said Governor, notwithstanding his promises to defend the said City and Castle, and dispute it to the last, had yet a real intention to deliver up the same to the enemy before ever they were besieged by them,

and no thought at all to defend them to the uttermost, or till they might be relieved by his Excellency; as appears by the premised Articles, by the said Governor's refusal to send the prisoners, formerly taken, out of the said Castle, before the enemy approached, when moved to it by sir William Waller; saying to him and others, that he would detain those prisoners still there, to make his own conditions, and composition the better with the enemy, if they came before it; by his commanding Mr. Hassard, the master-gunner there, to lay aside a reserve of 30 barrels of powder, with match and bullet answerable, to which when he was reduced he would then treat with the enemy; (which he did long before he was reduced to this large reserve) by other speeches to the like effect; and by his moving sir William Waller to depart from Bristol before it was besieged, who otherwise would have adventured his life in its defence.

8. *Item*, That he the said Governor, when he surrendered the said Castle to the enemy, had at least 60 barrels of powder therein, besides what was in the City and Forts, being above 20 more than were in Gloucester when it was first besieged, five hundred cannon-shot, fifty great granadoes, fourteen hundred weight of match or more, great store of musket-bullets, and tin to make more; a match-maker, a bullet-maker, with materials to make match and bullets; and all manner of provisions and victuals, sufficient to maintain 1,000 men for three or four months space at least; eleven cannons therein mounted; besides 44 cannons mounted in the City and Forts: all which were surrendered to the enemy before any battery or assault made against the said Castle, though he had men more than enough by his own relation to defend it, contrary to his promise made to divers inhabitants of the said City, best affected to the Parliament, to defend the same to the uttermost; and dispute every foot thereof with the enemy, and to keep it, or to lay his bones therein; who thereupon sent their estates with provisions for them and their families, for three months space or more, into the said Castle, where the said Colonel promised to secure and defend the same, most of which their estates were there seized on by the enemy to their undoing; by reason the said Colonel admitted the enemy into the said Castle, and delivered up the keys thereof unto them, before the hour agreed on in the Articles, such was his extraordinary haste to quit the same.

9. *Item*, That the said Colonel, to aggravate this his dishonourable action, hath presumed to justify the same, not only before the honourable House of Commons, by word of mouth, but likewise before the whole kingdom, and world, in printed relations and letters, wherein he hath laid an extraordinary great blemish both upon the honourable Houses of Parliament, and his Excellency the earl of Essex, their Lieut. General, by publishing in print, that had he manfully held out the said City and Castle to the last, yet he could not have

expected any relief from them in six or eight weeks space at the least; when as Gloucester, since besieged with far greater force than Bristol, was yet relieved by them in less than half the time (as Bristol doubtless might and would have been) and held out a full month's siege or more, as Bristol might have done: though he the said Colonel, to add to his former offence, and hinder or anticipate the relief of Gloucester, that it might be lost as Bristol was, gave out in speeches to some members of the House of Commons and other, and namely to master Samuel Browne, and master John Sedgwick, that he would lose his head, or be hanged, if Gloucester could or would hold out three days siege, if the enemy once came before it, or words to the like effect.

10. *Item*, That the said City and Castle were so cowardly and unworthily delivered up to the enemies, that they have since published in print, and given out in speeches, 'That the said Colonel Fiennes did bestow the same upon his majesty;' that 'they were delivered up to them beyond their expectation, and that they could not have taken the same had it been defended by the Governor;' who eventually at least, if not intentionally, did but strongly fortify, and plentifully store the same with all manner of provisions to make it tenable, at the kingdom's and the country's extraordinary expence, to render up the same to the enemy with greater advantage to them, and far more prejudice and damage to the commonwealth, as soon as it was made defensible.

CLEMENT WALKER.  
WILLIAM PRYNN.

The ANSWER of Col. NATHANAEL FIENNES, to the ARTICLES exhibited by CLEMENT WALKER, and WILLIAM PRYNN.

1. To the first Article, colonel Fiennes denieth, That he did suddenly apprehended, imprisonment, and remove from the government of the City and Castle of Bristol, col. Thomas Essex, the Governor thereof, upon pretence that he intended to deliver up the same into the hands of the common enemies of the Kingdom and Parliament; or upon any pretended cause whatsoever; or that col. Thomas Essex was ever governor of the said City or Castle; but doth acknowledge that soon after his coming to Bristol, by an express order from his Excellency, written all with his own hand, he did send unto him col. Thomas Essex, who at that time commanded a regiment in that City; and as he is well assured that his Excellency had very good cause to send that order to him, although he knew nothing before it came unto him; so he did not put it in execution, but upon mature deliberation and advice with most of the wisest and best affected gentlemen to the Parliament, and of the best quality in the town and country, and upon good cause appearing unto him; and that for the security and preservation of that City, which in all probability could not otherwise at that time have been secured. And he doth further deny, that there-

upon or at any time after, he did seek or desire the government of that City for himself: But on the contrary, that he did seek and endeavour to be freed from that employment, and that not in compliment, but really, earnestly, and frequently, as he is ready to make good by proof. And lastly, he doth deny, That ever he undertook to the Parliament, or my Lord General, to make good that City or Castle; or that ever he had any charge of the Castle as a fort, or otherwise than he had of any church or house in the City; But on the contrary, That he did from time to time declare, that he could not keep the City in the condition it was, and that it would certainly fall into the hands of the enemy, unless better provision were made for it; and that he would not be answerable for it, unless certain propositions which he sent to the Parliament, or something equivalent thereunto might be granted unto him, which he could never obtain. And further he affirmeth, That he never did undertake not to surrender the said City or Castle, both or either of them without the previous consent and order of the Parliament, or that the Parliament ever did, or in reason and justice could require any such undertaking of him, or that he ever did or would have undertaken it. All which he is ready to make good by proof.

2. To the second Article, col. Fiennes doth acknowledge that not many days after his sending away col. Essex, by the blessing of God upon his care and vigilance, he discovered and defeated a wicked Conspiracy, plotted between divers inhabitants of the City of Bristol and some of the officers of col. Essex his regiment, for the delivering up of the City into the hands of prince Rupert, and other common enemies of the Kingdom and Parliament; and thereupon apprehending and imprisoning divers of the Conspirators, and thereby disappointing the design of the enemy, he was a means under God, at that time, of preserving that City; for which he received public thanks by a Letter from both Houses of Parliament, which he hath to shew: and after, by virtue of a Commission from his Excellency, by order of both Houses of Parliament, he called a Council of War, whereof himself was appointed President by the said Commission, and by that Council of War divers of the Conspirators, after due Trial, were condemned, and the Sentence of Death passed upon them, which Sentence col. Fiennes did forthwith put in execution till such time as he had acquainted the House of Parliament, and his Excellency therewith, and the grounds thereof; and then by his Excellency's command, according to a Vote of the House of Commons, he did execute two of the principal Conspirators, (viz. M. Yeomans and M. Bucher) notwithstanding the importunity and most earnest intercession of the mayor and aldermen, and divers of the City to the contrary, and the threats and desperate Speeches given out by the Malignants, although it so happened at that time, that a considerable strength was drawn forth of that town to the assistance

of sir William Waller; insomuch that some ill-affected persons in the town conceiving us so weak that the Malignants were able to master us, had procured his majesty to send a trumpeter with a letter from himself to the City, to stir them up, and command them to rise and rescue the said Conspirators, and to kill and slay all those that should oppose them therein: yet for all this col. Fiennes, in obedience to the Parliament and his Excellency, did put the Sentence in Execution, and that at midday, and in the middle of the town; in all which he conceiveth that he discharged his duty faithfully, temperately, and resolutely.

3. To the third Article, he answereth, That notwithstanding, that without any, or very little help at all, by his own proper industry, and uncessant travail and pains, he endeavoured to fortify and furnish that place in such sort that it might be in posture of defence, and that without troubling the Parliament at all; he had well nigh brought a line or rampart of earth round about the town; whereupon there were some small works or redoubts, which in this Charge are called forts and sconces; and that he had procured some proportion of powder, artillery, guns, granadoes, and other provisions, whereof he found the town very much destitute; yet he denies that there ever was, or that he ever did, or could raise a sufficient garrison to defend and maintain that City against all the power of the enemy, that might or did come against it, for the space of three months or more, or for three days; or that he did undertake or promise to any gentlemen or inhabitants of the same, to keep it for so long space, in case that they should be besieged.

4. To the fourth, He denieth, that he deliver up the City or Castle of Bristol, with all the arms therein; or that he did deliver the same up, with all the prisoners, cannons, ammunition, &c. against the consent of the Parliament, or his Excellency their General; or that he did deliver them up traitorously, cowardly, or dishonourably, or contrary to any former promise of his, or contrary to his trust or duty, to the extraordinary great danger, dishonour, loss, or prejudice of the whole Kingdom and Parliament; and the evil example of other governors, and towns, upon dishonourable Articles, to which he was no ways necessitated; or, that he had no care to see the Articles agreed upon, punctually performed by the enemy, when complaint was made to him for relief, to the great prejudice and impoverishment of the inhabitants and garrison-soldiers there: But on the contrary, is ready to justify, that over and above his former good services, in sending away col. Essex without disorder or blood-shed, in discovering and preventing that wicked Conspiracy, and preserving the City thereby, notwithstanding a Proclamation set forth of purpose by the king, wherein he offered Pardon to all, both soldiers, citizens, and others, except himself, within the City of Bristol, at that time, in case they would peaceably yield up the said City; And over and above,

his great pains and care to put the City in as good a posture of defence as possibly he could; and notwithstanding, he never undertook to make good the City or Castle, or either of them, declaring that he could not, nor would not undertake it; and that also he could never obtain a sufficient garrison for the defence of that place for any considerable time, or monies to maintain it, or means to raise it; Yet he did defend that Town and Castle to the utmost point, not only of duty, but also of honour, that any soldier could, or ought to have maintained the same: And that he surrendered them upon good and honourable conditions, in respect to the state he was in: And that he did take all the care that any Governor could or ought to do, that they might be punctually performed; and that the breaking of them was not any fault of his, but principally by the failing and unfaithfulness of the enemy, and partly by the disobedience and disorder of some of his soldiers: all which he is ready to justify in every particular. Notwithstanding that after the line or principal rampart of the Town was entered, and the enemy lodged within it, he did surrender the Town and Castle, with all the prisoners, cannons, ammunition, artillery, military-provisions, magazines, victuals, and part of the arms therein, before the enemy had taken any of the out-forts about the same, or had made the least assault or battery upon the walls of the City, (which had none at all on that part against which the enemy then lay, nor at all defensible in any part on that side the Town) or upon the walls of the Castle, or any mine or breach into any of the forts thereof: All which, nor the Castle, could not prevent the enemy being lodged in the suburbs by Froome-Gate, from immediately entering the Town by force. And neither could, nor ought to have been kept in the condition that things then stood, to the prejudice of the City and Garrison, and the surrender thereof upon terms of composition, but ought to have been surrendered together with it, as they were by the constant practice and policy of war in all places, the principles of justice and honesty, and the rules of wisdom and discretion, for the honour, profit, and best advantage of the kingdom and parliament.

5. To the fifth Article he answereth, That he did not of his own head, without the privy of any Council of War, send out for a Parley with the enemy, when the officers and soldiers advised and dissuaded the contrary, and would have repulsed the enemy, and defended the City to the uttermost: and that the surrendering of the Town was not principally, or not at all could possibly be, by his earnest persuation or advice, nor that it was by his advice or cowardice, contrary to his trust and duty to keep the same: But on the contrary he was advised to the Treaty by the far major part, if not by the unanimous consent of his whole Council of War, and of the gentlemen there present, unless it were Mr. Strode (who also, to the remembrance of many present, was not heard to give

any dissent when the question was put; and all that he said, tended only to a deferring, rather than a denial of the Treaty, without any good reason, that he either then did, or yet can give for his opinion;) and that by many expressions and other clear evidences, it did, at the time of the first proposition of the Treaty, appear, that col. Fiennes had for his principal aim therein, the honour and advantage of those by whom he was intrusted. And he doth deny that when the Council of War unanimously voted upon the Parley, that it was neither safe nor honourable for them to depart the Town, unless they might march thence with half their arms at least, and their colours, he did thereupon offer some private conference with col. Gerrard, one of the enemies Commissioners, in the garden; at which, without the privy, and contrary to the Vote of the said Council, he did make and insert the said Article, that they should leave all their cannons, and ammunition, with their arms and colours behind them, and returning to them out of the garden, told them plainly; that they should now deliver up all to the enemy, or that it was expressed in the Articles he then produced, that they should leave their arms and colours behind them, to the said Council's and soldiers great discontent: But on the contrary, he doth affirm, and will justify, that, he bid the soldiers make conditions for themselves, the gentlemen of the country for themselves, and the citizens for themselves, which was done accordingly: And after, when upon the treaty the gentlemen of the country and citizens were satisfied with their demands; Colonel Fiennes was the first, and the chief, not the only man that took exception at the condition for the soldiers; the Commissioners of the enemy standing upon it, that they would allow only the officers their horses and arms; and he on the other side standing as peremptorily for all their horses and arms, and colours: whereupon he was about to break off the Parley, and the Commissioners of the enemy ready to return to the army, but by the earnest persuation of the mayor and citizens, the Commissioners of the enemy were persuated to walk into the garden, and to leave us at the Council of War to debate amongst ourselves concerning that point of the arms and colours: Whereupon col. Fiennes stood very stiffly, till at length he was persuated by the Council of War to rest satisfied with half arms, and our colours, if we could obtain them; whereunto col. Fiennes expressed a great deal of resolution to adhere, and he had done it to the end, had the soldiers upon their guards done their parts as well as he did; but returning into the garden with this resolution, many of his officers following him, and it being free for any to enter, openly and before the mayor and divers of his officers, he began to insist upon his former propositions for all his arms and colours; whereupon they yielded that our troopers should have their horses and swords, and then col. Fiennes descended to the propositions of half arms and our colours, but being

not able to obtain it, he yielded so far to the intreaty of the mayor and citizens, that he would not break upon that point of his own head without the advice of his officers; and thereupon withdrawing into a room with all his officers, that there were present, he debated the matter a good while with them, and could not be brought to yield thereunto, till six or seven of his officers came out of the town, and told him, that they could not get six men a-piece of their companies together, they ran so fast over the key to the enemy: Whereupon, although with much reluctancy, he was content to yield to that condition, for fear of putting ourselves into a far worse condition; and after calling in the Commissioners of the enemy, we fell to set down all the Articles in writing, there being liberty to any man to take his exceptions upon the penning of them: At which time captain Birch coming in, and desiring a more clear expression for the citizens and inhabitants to have liberty to carry away their estates, which col. Gerrard boggling at, colonel Fiennes rose up, and with great earnestness protested, 'That he would rather die than not provide for his friends and their estates, as well citizens as soldiers;' whereupon col. Gerrard consented to it: and it was further expressed, that they should have three days liberty, to resolve whether they would stay or depart with their goods; and the last Article was no new Article inserted at the latter end, but only a clear expression of what was before agreed upon, and fully contained in the first Article, as by the Article itself doth appear. And lastly, col. Fiennes doth deny, that he was so over-hasty to surrender up the Town and Castle, that he delivered them up to the enemy one hour or more before the time agreed, or that he suffered the enemy to enter and possess them before the soldiers were marched out. But on the contrary, that he gave order to all his officers that came to him for orders, to keep their soldiers upon their guards, until one hour before we were to march out of the Town: at which time having given order to his captain lieutenant Stokes with his company to stay in the Castle, and to keep it till prince Rupert sent to demand it, and then to deliver it up unto him according to the Articles, he gave order to the rest of his officers, to draw their men into the marsh, whither he did repair unto them, and about nine of the clock marched out with the greatest part of them to the gate which leadeth to Warminster, where he stayed within the Town for an hour or two after: But the enemy did enter the Town, contrary to their faith, and the Articles agreed upon, an hour or more before nine of the clock, about the time that we were drawing off to a rendezvous, and fell upon our men, disarming, dismounting, and pillaging them, by means whereof, and by no fault of col. Fiennes, many, both soldiers and citizens, were pillaged and plundered.

6. To the sixth, he acknowledgeth and owneth the Clause mentioned to be in his printed Relation, and that the enemy having entered in

one place on Wednesday morning the 26th of July, were valiantly repulsed in all places else with great loss; but doth deny, that to his knowledge any women made any such offers as in the Articles is expressed, or that he should have thought it a fit means to dead the cannon bullets, or that any such speeches were given out, or any such actions done by any inhabitants or soldiers to his knowledge, as that they brake their arms, and said they were betrayed; or that he would have suffered them unpunished, if he had heard or known any such thing: and for the rest of the Articles he denieth it in the whole, and in every part thereof; and on the contrary affirmeth, and is ready to prove, that during the whole siege, he did both by his words and actions encourage the soldiers and officers to do their duty, thanking some, praising others, stirring up others, sending them bread, wine, victuals, and giving them monies, and promising them further rewards, but especially by his own example, going constantly the round at all hours of the night, sometimes in the beginning of the night, and sometimes in the latter end thereof, and repairing upon all occasions to the places of most danger, and standing most usually with his troop, in the place of greatest danger, and by all other ways and means that could be expected from any Governor. And he further affirmeth, that the place where the enemy entered, was not a likely place for the enemy to enter by, was weakest assaulted; could not have been better guarded without drawing forces from other places, which were in more apparent danger and more strongly assaulted, was more strongly guarded than some other places that were more strongly assaulted, and yet the enemy repulsed, and that the enemy might have been in all probability repulsed there also, had the guards of foot or horse that were to second them done their duty, as well as they did elsewhere, or had col. Stephens or his major sent down some foot together with the Governor's troop when they went to charge the enemy, out of the men that were under their command upon the next adjoining guards, which they might and ought to have done, and could only well do it. And he further affirms, that when the enemy first entered they were at the least two hundred; that soon after they dug down the rampart of earth all flat for their horse and foot to enter, and that then immediately they possessed themselves of walls, houses, Essex-fort, and other places of advantage; that within one hour's space at the farthest, after the entry of the first, there entered at least 300 foot more, and a regiment of horse with ordnance, and after both horse and foot entered as fast as they could; that col. Fiennes, so soon as he had notice of the entry of the enemy at that place, made all the haste he could to repair thither, but that before he got thither, his men were come off the lines for half a mile together, and his own troop (unto which he was going up) beaten off also: that afterwards both by his commands and his own person, he used the best, the safest, the speediest, and the

most effectual means that any then could, or yet can shew for the securing of the city, the safeguard of his soldiers, and for the repulsing of the enemy, but divers of his soldiers did disobey, and other of the soldiers and commanders did refuse to yield ready obedience to his commands, especially maj. Lewes, to whom he was constrained to send an order upon pain of death to yield obedience before he would do it; and by his and others disobedience, the service was hindered and retarded, that a sally could not be made so seasonably as otherwise it might have been, and with better success than it was, although when it was made, it was performed with such resolution, that it gave a stop to the enemy, who otherwise had, in all probability, entered the rest of the Town by force, being already possessed of two of the greatest works thereof; and col. Fiennes did not cause any Parley to be sounded till such time as his men were beaten back again with fresh regiments of foot and horse brought down upon them, but was still ready to have seconded them with his own company, had there been any hopes to have beaten them off, and till such time as going round the Town with his Lieutenant Colonel, he spake with great earnestness to all his officers that he could meet to get their men to their colours again; commanding them to repair to the marsh, and that there should be victuals, and twelve pence a man given them, which accordingly was given to as many as came together, but could never get together, or to their guards, two hundred, of ten or twelve hundred of the men that were on that side the Town: whereupon by the advice of his Council of War, he sent forth a Parley; all which he is ready to prove.

To the seventh, He answereth, That notwithstanding he declared that he could not keep the Town with the force he had in it, yet he denieth that he had a real intention to deliver up the same to the enemy before ever it was besieged by them, or that he had no thought at all to defend it to the uttermost, or till it might be relieved by his Excellency, or that he refused to send the prisoners, formerly taken, out of the Castle before the enemy approached, or that he commanded Mr. Hasard the master-gunner, to lay aside a reserve of thirty barrels of powder, with a purpose to treat when he was reduced thereunto; or that he moved sir William Waller to depart from Bristol; or that sir W. Waller would otherwise have adventured his life in its defence; or that it doth appear by any of the premised Articles, or any speeches of his concerning the prisoners, or a reserve of powder, of sir W. Waller's departure from Bristol, or any other speeches of his, that he had not a real intention to keep the Town and Castle to the uttermost, that in honour, wisdom, and faithfulness, unto those by whom he was intrusted, he ought to have done: but that the contrary doth appear by very many deeds and speeches of his, and by those very particulars instanced in, so far, and in such a manner as they were spoken and done by him. And he

further affirmeth, that he did often move sir W. Waller to free him from the care and danger of so many prisoners, but could never obtain it; but when he thought neither Town nor Castle safe enough to keep them, he spoke to him to send them away to a place of more safety, but neither shewed him the means how to do it, nor offered to take any of the most considerable with him, although he had an absolute command over them at all times, whensoever he pleased to signify his pleasure concerning the discharge or disposal of them, as he did discharge maj. gen. Bret, and divers others (whereof some led on those that assaulted us at Bristol.) That col. Fiennes spoke to sir Arthur Haslerigge, when he took leave of him, to take some of the prisoners away with him in the ship, but he refused it: that he spake to capt. Birch (who seemed forward to undertake such a matter) to see if he could find means to send them away speedily and safely by sea, and that he would contribute his best assistance thereunto, but he also gave it over: That he commanded Hasard the master-gunner, when the enemy was approaching the town, to lay apart a reserve of thirty barrels of powder, and to keep it private, that every man might be careful to husband that which appeared, and to make no waste thereof; and that in case he was forced to retreat into the Castle before he came to Treaty, he might have wherewith to defend himself: but Mr. Hasard did so overdo his command, that though afterwards at several times he commanded him to give a perfect account of all his ammunition to his brother col. John Fiennes, who was to have the chief care thereof over him, yet he did conceal from him this reserve; insomuch that when col. John Fiennes was required to declare at the Council of War, what store of ammunition was left, he informed us that he had taken a particular account thereof, and that there was not above three or four hundred weight of match, and between twenty and thirty barrels of powder (as indeed he knew of no more;) and that they were spending of that too: whereby (as by like speeches of the master-gunner to the like purpose) col. Fiennes did believe he had broken up his reserve, and that he was spending of that also, and that there was not above twenty barrels of powder left; and did not certainly know the contrary, till such time as he was come to London, and had particularly informed himself by Mr. Hasard of the truth: and that the enemy knew not of more powder in the Castle than twenty barrels, for divers weeks after the surrender of the Town, he is able to prove. And lastly, he doth affirm, that sir W. Waller was so far from needing to be stirred up to depart the Town, that on Friday, the day after he came to Bristol, commanding some of his officers to draw forth some of their men into the marsh, and they conceiving that it would not be possible to do it till the next morning, he replied, that then it might be too late: and the next day drawing them out upon Durdam Down, where col. Fiennes there asked,

in case the enemy should advance towards Bristol, how he would dispose of himself and his horse, he answered, that he must retreat. And it is evident in many respects, that it was necessary for him to draw out of the Town; for it is most likely, that had he not done it, the Town would have been left sooner than it was, and the dishonour and loss of the state been greater; and that if he had, when he first came to Bristol, followed the advice given him by col. Fiennes and his officers, or done according as he promised col. Fiennes, when he took his leave of him, he would have done better service, both for the preservation of that city, and the rest of England, than by the course he took: all which he is ready to prove and justify.

8. To the eighth Article, he doth deny that there were sixty barrels of powder in the Castle when it was surrendered, or that he did promise to any inhabitant of the City to defend the same, but in case he was forced to retreat into it; nor any longer than he thought fit, for the honour and best advantage of them by whom he was intrusted; or that there was in it all manner of provision and victuals sufficient to maintain 1,000 men for three months space; or that he delivered up the keys of the Castle before the hour agreed on in the Articles; or that by reason thereof many inhabitants of the City, or any other person whatsoever, had their estates which they brought into the Castle seized upon; But on the contrary he affirmeth, that there were but 30 barrels in the Castle when it was surrendered, and that was 30 more than either he or his Council of War knew of before they came to London; and that therefore he was less able to defend the Town four days, or the Castle 14 days, than Gloucester might with the like proportion be defended 24 days; That there were about 11 cannons mounted in and about the Castle, and that there was need of more, to supply the many defects and universal weakness thereof; but that there was never any one amongst them all, or in the Town, fit for battery, or to hinder the approach of the enemy in any effectual way; but he had sent to London for 3 to that purpose, and that they were at hand, but not yet come to him; that although he had no charge of the Castle, more than of any house in the Town, nor was obliged to hold it further than he judged it for the good of the public, yet he did resolve to make use of it for the advantage of the state, and of their friends and soldiers; as also he did, by making the terms of composition the better by the countenance thereof, which was the best use he could make of it in that condition he was in, and would have been as ready to have done it by the defence thereof, if he had been forced thereunto, or that it had been fit in wisdom and justice to have taken this course, as if succours had been at hand, and in some other cases it might have been. And for this, and divers other reasons, he did take some pains, and was at some cost, for the strengthening of it, and furnishing of it with great and small shot, and grenades, and provision of victuals, and

other necessities, whereof what was the quantity of each sort he is uncertain; but is certain, that none was employed but where there was occasion, nor should have been spared, if there had been occasion to use them; but doth affirm, that he never gave order to the commissary of victuals, to make provision of victuals for more than 1,000 men for a month, wherein he aimed at a double proportion to what he thought he should have need of; or that he ever hoped to keep the Castle for more than a fortnight, or three weeks at the farthest: That he was content, for divers good reasons, to suffer the best affected persons to carry into the Castle some of their principal goods, but was very angry when he saw them offer to carry in their lumber, and straitly forbid it. That a special Article was made for them that carried in their goods, that they might have free liberty to carry them out at leisure: That the citizens themselves, being divers of them upon the guard in the Castle, that had their goods there, made such haste to get them out on Thursday morning, that leaving their guards, and major Wood, and others that had charge of the soldiers in the Castle, suffering their soldiers to go from their guards without and against order, the passage into the Castle was so thronged, that none could pass in nor out, and by that means some of the prisoners got loose in the Castle, and grew disorderly, and some of the enemies got in before the time: but colonel Fiennes coming thither, and seeing this disorder, with his sword in his hand beat back the people that thronged the draw-bridge, drew up the bridge, and got some of his soldiers to their guards again, put their arms into their hands, and had drawn all his soldiers into it, had he not received news while he was doing this, that the enemy was broken into the Town, contrary to the Articles, and were dismounting, disarming, and pillaging our men; Whereupon he gave order unto his captain-lieutenant Stokes, to keep the Castle with his company, and to deliver it up to prince Rupert when he sent to demand it; and was forced himself to go into the marsh with captain Terringham, one of the enemies hostages, with him, for the safeguard of his soldiers, both horse and foot, and of his friends in the Town, as is expressed in answer to the fifth Article. And lastly, He doth affirm, and will justify, That the Castle was in no sort tenable, neither in respect of the strength thereof, or of the provision wherewith it was furnished, for one quarter of the space, wherein possibly he could have had succours; nor for half the quarter of the time, where, in possibility, he could have expected them: And that if it had been tenable, yet neither by the constant practice or maxims of war in all places, nor by the rules of honesty or Christianity, that he ought to have held the same; or that it had been for the honour and advantage of those by whom he was so intrusted to have done; and therefore ought to surrender it together with the Town, without disputing it at all, as he did.

9. To the ninth, he denieth that he hath

done any dishonourable action, or that he hath said or done any thing amiss, or unduly, or untruly, in the justification which he made of the Surrender of the City and Castle of Bristol in the honourable house of commons, or any other ways. And the rest of the Article he denieth in the whole, and in every part thereof; and doth affirm, and doubteth not but to make appear to any that are versed in military affairs, that, without detracting any thing from the worthy Governor, who did as much as the enemy put him to, and as honourably as any man could do, that he had a harder task to hold Bristol in the condition it was in, and in the manner that it was assaulted 4 days, than col. Massy had to defend Gloucester 4 weeks; and that he was so far from declaring that Gloucester would not hold out 3 days, that he often declared, that if they had ammunition enough, they might do well enough, and hold out till relief came to them; but oft he feared they might be strained therein, as having good cause to know it: for had he not supplied them with ten barrels of powder; and had they not had two or three more out of Berkley Castle, which he sent thither but a week or two before, the Town had been lost for want of powder. And in this respect, he desired those whom it concerned to relieve them, not to be too confident of their holding out and to hasten relief unto them; so far was he from desiring to hinder relief to be sent unto them, that it might be lost as Bristol was.

10. To the tenth He answereth, That it is an Article without a Charge, an Argument without a proof; for that the testimony of the enemy can make nothing against him, it being their parts to dishonour and disgrace their enemies as much as they can; but the testimony of an enemy, though it be of no validity against him, yet it is strong for him; and as he doth deny, that those that are soldiers on the enemies side have any such sense of the action, so he doth affirm that they had, and have expressed the contrary.

The first Day's Hearing upon the three first ARTICLES.

The Articles and this Answer to them being read, the Prosecutors proceeded presently to the Proof of their Articles: And whereas they conceived the Defendant would have granted the three first Articles, being but introductive to the Impeachment, yet he put the Prosecutors to their Proofs; 1. That col. Essex was ever Governor of Bristol. 2. That he ever removed or sent col. Essex thence. 3. That himself was ever Governor of Bristol.

And then bid Mr. Prynne prove these particulars ere he proceeded farther.

Mr. Prynne thereupon replied, that he much admired how a man of his birth and breeding should so much forget himself, as to deny that in private before the Council, which himself had not only confessed, but professed before the House of Commons, (the representative body of the realm) the City of Bristol, and pub-

lished in print to all the world in public: But since he denied these Particulars, he would easily make them good against him.

(1.) For the first it is clear, that col. Essex was both acknowledged and stiled Governor of Bristol, by the Parliament, his Excellency, the Committees of Somersetshire, Gloucestershire, Wiltshire, the citizens and garrison of Bristol, and all the gentlemen of those parts, and by col. Fiennes himself at his first coming to Bristol, who gave him the title of Governor.

(2.) That he made out his warrants, commands, and ordered all things for the City's defence and fortification, as Governor, having the command in chief of the City, Castle, and Forces there, as absolutely as any Governor whatsoever.

(3.) That in the Book, intituled, 'A full Declaration of Colonel Fiennes's March to, and 'Proceedings at Bristol,' compiled and published by himself, or his major Langrish, with his approbation, p. 3, 4, 10, 12 to 16, col. Essex is both acknowledged and stiled Governor of Bristol, and that by himself, in his own printed Letter to his father to justify his removal; and the Depositions which he took and published against him, attest him to be the Governor. Therefore he must even blush to deny all these pregnant evidences, and to put us thus to prove that only now, which he ever confessed before.

Whereupon col. Fiennes said, I confess he was a Governor *de facto*, but not *de jure*.

To which Mr. Prynne replied; 1. That he was sent thither, and placed there, by his Excellency's special command, and the Parliament's approbation; therefore he was as much Governor *de jure* as himself or any other. 2. That he was obeyed as a rightful Governor till he sent him thence, and so esteemed by the Parliament, his Excellency, the Garrison, City, and Committee. 3. If he was not Governor *de jure*, then all his commands and acts there done, during his government, were injurious, unwarrantable, which he presumed the Defendant durst not affirm.

Then he replied, That col. Essex had no Commission, and therefore was no rightful Governor.

To which Mr. Prynne rejoined, 1. That for ought he knew he had a Commission. 2. That his Excellency's sending of him thither, to take in command the city, and his confirming him there as Governor, with the Parliament's consent, was a Commission sufficient to make him Governor *de jure*. 3. That if his Excellency commanded an officer by word of mouth alone, without a Commission under seal, to lead any brigade out upon service, or to take in any Town or Castle, (as he had lately commanded major Skippon to take in and fortify Newport-Pannell) this was warrant enough to make him Governor both of the brigade, town and fort; and if he should betray, or basely deliver up that brigade, town, or fort, when taken in, he should be condemned for it by martial law as a traitor, and the want of a Commission would

he no excuse to acquit him from being a Governor, and betraying his trust.

Secondly, 'That he removed and sent away col. Essex from Bristol.'

(1.) Mr. *Prynn* proved it, first by his own printed Letter, and the Depositions published by his direction, in 'A full Relation,' &c. p. 4, 6, 10, 11, 12, where he useth these expressions: 'Col. Fiennes,' (writes his major Langrish) 'who communicated unto me an order ' that he had received from his Excellency, ' whereby he was enjoined to send col. Essex to Windsor, or the Parliament, in case he ' saw cause for it; and having given me Reason ' to see and know that there was cause so to do, he asked me, whether I would assist him ' in the execution of it or no? The which, seeing cause for, I promised to do. But it will ' be necessary here to annex the Reasons ' which caused col. Fiennes to put in execution ' the Order given him by my Lord General, to ' send up col. Essex from Bristol; not as an ' accusation against col. Essex in this place, ' let that be followed by those to whom it appertains) but by way of vindication of col. Fiennes, that he had done nothing herein, ' but what the trust reposed in him, and the ' safety of that important place did require ' him; and that the rather, because it begins ' so far to reflect upon col. Fiennes, as if he ' had done him injury, and there had been no ' Plot at all, but a Plot to put himself in the ' Governor's place. The Malignants in the ' town taking up this, and spreading it, and ' adding strength to it by col. Essex's own ' speeches and carriages, it will be a great injustice to him, who hath done his duty, and ' therein no inconsiderable services, to be requited with calumny, &c.' Besides, col. Fiennes writes thus in a printed Letter to his father: ' My lord, &c. I have sent a Letter ' long enough, and full enough of particulars, ' concerning col. Essex, and which I think ' were sufficient to satisfy any man, that it was ' necessary he should be removed from hence, ' before the town could be put in any possibility of security, although he had not been ' touched in the point of his fidelity: His being ' here, I found inconsistent with the good and ' safety of this city; and though there were no ' apparent proof of his falshood, which I never ' affirmed, yet there were shrewd grounds of ' jealousy, as may appear by the Depositions, ' whereof I have sent your lordship a Copy, together with this Letter. For my part, so my ' Lord General and the world be satisfied, that ' I had good reason to send him away from ' hence, according to his direction, I would not ' have things prosecuted too hard against him, ' although I am very much deceived, if many a ' Governor of a town hath not been called to ' an account, in point of his fidelity, upon ' weaker grounds than those which I have sent.'

(2.) By his own express Confession, in the latter end of his Answer to the second Article, though he denies it in the beginning, that he did it not upon any Pretended Cause.

To the Third, ' That himself was never Governor of Bristol,' Mr. *Prynn* answered, That it seemed he had carried himself so dishonourably in that government, that he was now ashamed or afraid to confess himself Governor, for fear he should suffer for it, else he could not have the impudence to deny it. But since he thus denied himself Governor, he would quickly prove him so; 1. By his own Warrants, during his government, wherein he stiled himself Governor of Bristol. 2. By his acceptance of that title from his officers, soldiers, the committee, and all others. 3. By the Parliament's, his Excellency's, and own father's intitling of him Governor of Bristol, in their letters and directions to him. 4. By his exercising all the authority, and receiving the pay of a Governor. 5. By the full Declaration concerning his March to Bristol, set forth by his major Langrish: who, in his Letter from Bristol, March 6, 1643, p. 3, 4, 6, stiles col. Fiennes 'our Governor,' and 'now Governor of Bristol,' three several times, long before he had a commission to be Governor there. 6. By his own draught of an Ordinance presented to the House of Commons by the lord Say, for the settling of a sufficient Garrison at Bristol; printed by himself, in his 'Relation made to the House of Commons concerning the Surrender of the City of Bristol,' p. 17 to 23, in which we find this gentleman no less than eight several times expressly stiled, 'Colonel Fiennes Governor of Bristol.' And are you not ashamed so confidently to deny that here in the presence of this honourable council, which yourself have so lately published to all the world? 'Oportet mendacem esse memorem.' 7. In the very Articles of the Surrender of the City and Castle of Bristol to the enemy he intituled himself 'Governor,' witness the Title of them: 'Articles agreed on at the city of Bristol, between col. Nathanael Fiennes Governor of the said city on the one party, and col. Charles Gerard and captain Wm. Teringham, for and on the behalf of prince Rupert, on the other party, July 26, 1643.' And Article 1. 'That the Governor col. Nathanael Fiennes,' &c. Certainly if he were not Governor before to keep, yet these very Articles prove he was then Governor to surrender it. And now, sir, take your choice; If you were not Governor, then you had no power to treat or surrender the City or Castle, and so must be condemned (by your own confession) as a betrayer of them: If you were Governor of them, then you shew yourself most unworthy your birth and breeding in denying it now; especially since you have given an Account in a printed Relation, of your Proceedings and Surrender of Bristol, which is in law a confession of this trust. To conclude: His Excellency's own Proclamation, posted up at Westminster by the Defendant's procurement, and summoning us to give information against him, doth no less than three several times together stile him, 'col. Fiennes, late Governor of Bristol;' and therefore eternally concludes him to deny it.

The Colonel confessed at last, That he was Governor of Bristol; but he next denied, in the Fourth place, That he was ever Governor of the Castle of Bristol, though he was of the Town.

And Fifthly, That he had ever any Commission to be Governor of Bristol.

To the first whereof Mr. Prynn replied, 1. That he had the chief command of the Castle, and none else. 2. That he placed his own brother, col. John Fiennes, as commander in chief, and all other officers under him, in the castle. 3. That he only gave order for the fortifying, victualling, and garrisoning of it. 4. That he laid up the stores and magazines of the City there, disposed of all the lodgings in it, intending to make it the place of his last retreat: therefore certainly he was Governor of it. 5. That though Bristol Castle and the City were divided heretofore, the Castle lying in Gloucestershire, and being no part of the City, yet since queen Anne's entertainment at Bristol, king James at her request gave and united the Castle to the City, making it part thereof, and so it continueth to this day: Wherefore since he confesseth he was Governor of the City, he must necessarily be Governor of the Castle too, it being no parcel of the City, and having no other Governor that had charge of it in chief but himself alone, and his brother under him.

To this the Defendant, in the Sixth place, replied, That he had no Charge of it as a Fort, no more of any one house in the City.

To which Mr. Prynn rejoined, 1. That the Castle was never reputed a house, but always a fort, a castle, and a very strong one too; therefore he must needs have the government of it as a fort, not as a house. 2. Himself esteemed it the strongest fort in and about the city, bestowed much cost in fortifying it, laid up his magazines in it; kept a special garrison there, made it the place of his last retreat, promised to hold it out till the last, if the city were taken, and to lay his own bones there rather than yield it up; therefore certainly he took charge of it as a fort, and must answer for surrendering it as a fort.

Upon this col. Fiennes replied, 'That the Castle was not mentioned in his Commission, and so he was not chargeable with it as a Fort.'

Which Mr. Prynn presently laying hold of, rejoined, 1. My lords, We have now a clear confession that col. Fiennes had a Commission to be Governor of Bristol, the fifth thing he even now denied. 2. Though the Castle be not particularly named as a fort in his Commission, yet this will not help him, for it is therein included as part of Bristol. This I shall undeniably evidence by a case or two: col. Fiennes, by virtue of his Commission, hath built several Forts and Sconces about Bristol, without, not within the City limits, though adjoining to it, as we have done the like about London; these Forts are properly no part of the City, as the Castle is, nor are they mention-

ed or included within his Commission, being built for the most part since the Commission was granted; yet no man will doubt but if col. Fiennes, or any other officer, had treacherously or cowardly delivered up any of these out-forts to the enemy, though no part of the City, it had been treason in him, and he should have suffered for it: So had he in like manner yielded up or betrayed any one house in the City or Castle, were it fortified or not fortified, to the loss or hazard of the City, it had been treason by the laws of war; many cities and castles having been lost, by the loss or yielding of one house or postern; much more then must he suffer for surrendering such a considerable fort as Bristol Castle to the enemy, without any battery, assault, or necessity, though he found it not specified in his Commission, which extends to the whole City, and so to every house, fort, and parcel of it, though not particularly mentioned in it.

The Colonel then said, 'That he had no Commission to be Governor of Bristol, and by consequence was not Governor of it.'

To which Mr. Prynn replied: 1. That since he undertook the charge of the Town and Castle, as Governor, it mattered not much whether he had a Commission or not; for he writ, and carried himself as Governor, even from the sending away of col. Essex, till the surrender of the Town and Castle, which he surrendered as Governor. 2. That himself had formerly unawares confessed, That he had a Commission to be Governor, and that he was stiled Governor by Langrish, and others, even in print, before he had his Commission to the Governor.

Thirdly, he should prove hereafter, That himself sent one captain Bagnall twice up to London to procure not only a Commission, but 'an independent Commission,' from his Excellency, that so he and his garrison might not be subject to sir Wm. Waller's commands, (which capt. Bagnall afterwards attested upon oath, and that he spent 16*l*. in these two journeys, to obtain this Commission, which the Colonel out of his liberality never yet paid him) and the Colonel himself confessed afterwards to the council upon Bagnall's testimony, he sent for and received an independent Commission; that so he and his garrison-soldiers might not be liable to sir Wm. Waller's commands, as they formerly were.

The Colonel hereupon told the Council, "That he sent for this Commission, not to guard the City against the enemy, as Governor of it, but only to keep his soldiers in order, who when they were commanded on any service, grew mutinous, and would still be calling on him to see his Commission: for which he gave an instance in col. Popham's regiment; who disobeyed him when they returned from the taking of Sherborne: And this made him to send for a Commission, only to order his soldiers, and keep them in obedience; but he never had nor sent for any Commission to keep the Town or Castle."

To which Mr. *Prynn* replied, "That this was the most absurd, irrational, if not unsoldierly distinction, that ever was heard of in the world, and that he might be ashamed to propose it before soldiers, in such an honourable Council of War as this: for what need was there either of a garrison or Governor of Bristol, or of such a Commission to keep his soldiers there in obedience and order, but only to preserve the City? This was the only end why he and his garrison were there placed, maintained by the Parliament and his Excellency to keep the City, which else would have as well or better kept itself without them. 2. That he was confident his Excellency never granted any such commission to any Governor (nor any other prince or general in the world) only to keep his garrison in order, but not to defend the garrisoned place, whereof he was Governor: such an absurd Commission was never yet heard of, nor such a nonsense distinction made by any soldier. And thereupon he desired the Commission might be produced, to the end it might appear whether it warranted this distinction, That it was only to discipline his soldiers, but not to hold the Town against the enemy. 3. That their lordships now saw the true reason why col. *Fiennes* so soon delivered up Bristol to the enemy; he pleads he had (or would have) no Commission to keep it, therefore it was he thus surrendered it up to the enemies almost as soon as they came before it: who doubtless would keep it better, defend it longer than he, though they wanted a Commission for it. 4. That this pretended disobedience of col. *Popham's* regiment was long after his Commission received, and that upon this occasion: col. *Fiennes*, and his major *Langrish*, would have taken from col. *Popham's* regiment that little plunder they had gained at *Sherborne*, with the hazard of their lives, at the country's charge, without any direction from *Fiennes*, who sent them not on that service; which injurious, avaricious act of his they justly opposed by standing on their guard, and so kept that booty he would have carried from them into Bristol castle. This occasion then being subsequent to his Commission, could not be the ground of its procuring, but rather that which himself unawares confessed; his desire of independency and exemption from sir *William Waller's* commands.

The Colonel then insisted: First, 'That he received his Commission only upon this condition, and with this intention, to keep his soldiers in order, but not to make good the Town and Castle: therefore he could be no further chargeable by it than as he received it.'

To which Mr. *Prynn* replied: (1.) That every Governor must receive his Commission at his peril, as it is granted and intended by him that granted it, (as tenants do their leases, and donces in tail their lands) and hath no power to annex any conditions thereunto: his Commission then being absolute, to keep the town for the Parliament, that being the sole use and

end thereof, his conditional accepting of it being repugnant to it was void and idle.

(2.) That the common and martial law\* of the realm annex this condition to every Governor and officer of trust, That he ought to discharge his trust and government, and keep that safe which is committed to his custody, to his utmost power, though it be not expressed in his Commission; and therefore this pretended conditional acceptance, directly against his trust and government, was most ridiculous.

Secondly, he alledged, That he never sought after the governorship of Bristol, but really desired not to accept it, and to be acquitted from it: to which end he produced and read divers Letters of his own to the lord *Say* his father, and one or two to his Excellency, which took up near two hours time in reading. In the reading of these Letters, the Colonel casually desired the council to observe, that many of them were written before he had his Commission for Bristol, which was not till the 1st of May 1643.

This Mr. *Prynn* taking present hold of, desired their lordships in the first place, to observe his voluntary confession of that Commission which at first he so obstinately denied.

To these Letters read, Mr. *Prynn* gave these short Answers:

1. That all these letters were either his own or his father's, and not above two or three of them proved true copies, and that by Mr. *Sprig* the lord *Say's* secretary; therefore no Evidence at all to justify or excuse him, himself and his own Letters being no competent witnesses in his own cause; and his father but *testis domesticus* at the best, if present.

2. That the substance of the chief Letter to his Excellency, was only a modest excuse of his own insufficiency for that Charge; a common compliment in every ingenious man's mouth, that is preferred to any great place of trust; who in words at least pretends insufficiency for that place which he perchance desires: just like our bishops usual Answer, *nolo, nolo, to vis episcopari*? now used as a formality, for fashion sake only, even when they come to be consecrated; when in truth they make all the friends and means they can to compass that Bishopric, which (for fashion sake, out of a dissembling modesty) they pretend, and twice together answer solemnly (when demanded openly before the Congregation) that they desire by no means to accept of. Therefore this letter of his can be no proof, that he was unwilling to undertake this government, since his subsequent acceptance and actions disprove this pretended refusal.

3. He observed, that in one of his letters dated the 4th April, he wrote earnestly to his father, to procure and send him his Commission: Therefore he was so far from refusing, that he sought the government, and sent captain *Bagnall* twice to his Excellency to procure

\* Littleton, sect. 378, 379. See Coke's Institutes on it, fol. 232, 233, 234.

his Commission: as was after attested upon oath.

4. That by divers of his Letters then read, it clearly appeared, himself was the chief informer against col. Essex, and the chief actor in his removal, to intrude himself into his place; for that we had now his own hand against his words and answer.

5. That the scope of all his Letters was only to complain and cry out to the parliament for more monies from London, or to get more authority to raise monies in the country, to pay the garrison, without which monies, he writ, he could not long hold the town; but there is not one clause in all the letters, that he wanted arms, ammunition, powder, men, provision, or that the town or castle was not tenable. If then he complained only of default of monies, with which if he were furnished, he made no doubt of keeping the town; and it is clear he lost not the town for want of money, (for he hath not hitherto either in his printed relation, letters, or answer, affirmed, that he surrendered the City or Castle for want of money) then by his own confession, he must surrender them either out of treachery or cowardice, they being tenable, and furnished with all other necessaries for a siege but money.

6. He observed that col. Fiennes did never refuse the place of governor, as he should have done had he been unwilling or unable to discharge it; that his importunity to quit it, in case he could get no monies, was with no intent to leave the place, but only to hasten the supply of monies; it being the argument and rhetoric of most other commanders in their letters to the parliament, to cry out for monies, else all would soon be lost, and they must disband.

7. That he took on him the power and place of a governor long before he had a Commission; that he drew and sent up ordinances to pass the house to enlarge his power and territories for 20 miles space round Bristol, and to settle himself in an absolute government there. That he both earnestly writ and sent up twice to his Excellency for a Commission by a special agent, that so he might be independent; that he accepted of the Commission when it came; yet never acquainted the city or committee of parliament with it, doing all things in a high imperious manner for the most part, of his own head, without their privacy or advice; that he held his Commission without surrendering it till he surrendered the Town and Castle to the enemy, so unwilling was he to depart with his governorship. From all which he concluded, it was apparent he was so far from refusing, that he did ambitiously affect, if not injuriously usurp, this government, for his own private lucre, to the prejudice of the former governor, and irreparable damage of the whole realm.

In fine, col. Fiennes desired Mr. Prynne to prove, First, That he ever undertook to his excellency or the parliament to make good the City or Castle, and not to surrender the same to the enemy without their consents,

To which Mr. Prynne answered, That the very law itself and common reason informs us, that every governor of a Town, or Fort, is to make them good, and not to surrender them to the enemy without the consent of those who committed their custody to them, else every governor might betray his trust at pleasure. This therefore being a condition in law annexed to all governors and officers, and he confessing himself to be governor, (and that by a commission which no doubt enjoined him to make good and keep the place in manner aforesaid) needs no other proof at all; the law resolves it, and therefore none must doubt or contradict it.

With this debate the Proof of the first Article was concluded.

Article 2. The second Article was proved by his own printed Proceedings mentioned in 'A full Declaration,' &c. p. 5, 6, 7, 8, 15, by his Answer to the Article, and Relation to the house of commons, p. 15. And Mr. Prynne informing the Council, that he did not charge it criminally, being a lawful action done by direction of parliament, but only by way of introduction and aggravation of the subsequent Articles, and crime in surrendering the Town so treacherously and cowardly, after this his sentence against, and execution of those Conspirators, it was passed over without further pressing.

Article 3. The third Article being likewise introductive, to aggravate his Offence in the 4th 5th 6th and 8th Articles, was briefly proved by his own printed Relation, p. 4, 5, 6, 23, by his printed Letter to his Excellency, confessed in part in his Answer, and to be further proved in the Proof of the ensuing Articles, was thereupon briefly run over: and so the first day's Hearing ended.

The Second Day's Hearing, together with the 3rd 4th 5th 6th and 7th, spent wholly in the Proof and Defence of the 4th Article, to which most of the others in the Reply and Rejoinder were reduced.

The three first introductive Articles being run over the 1st day, the Prosecutors, the next session, proceeded to the 4th, where the criminal and capital charge of the Impeachment began; The Defendant first demurred to the Depositions taken upon oath against him, both before the Judge-Advocate himself, and by sir William Waller and col. Carre, by commission from his Excellency; alledging,

1. That no Paper-Deposition ought to be allowed by the law, in cases of life and death, but the Witnesses ought to be all present and testify *visu voce*, else the testimony ought not to be received.

2. That sir William Waller was his enemy, and by confederacy with the prosecutors, had been the chief instrument of prosecuting this impeachment against him: to which end he produced one major Dowet a Frenchman, whom sir William Waller had displaced, and so

disgusted, to attest, that Master Walker's reply to col. Fiennes's Relation, was shewed to sir William and his lady before it was printed, and that sir William had spoken to his officers to acquaint Mr. Walker with all such passages as they knew concerning col. Fiennes, touching the siege and surrender of Bristol: therefore he was neither a fit commissioner nor witness in this cause, nor yet any of his officers under him.

3. That he had not joined with the prosecutors in Commission, neither had he notice thereof, that so he might cross-examine the Witnesses. Therefore for these reasons, he desired, that all the Paper-Depositions might be suppressed, and not given in evidence against him.

To the first of these Objections Mr. Prynne returned this Answer: First, That himself had formerly used this kind of proceeding in the case of col. Essex, against whom he had not only taken, but printed divers paper-testimonies, in things which might have proved capital if the proof had been full. That himself in this very case had sued forth a commission to examine witnesses on his behalf, without our privy, before we took forth any commission, who did but imitate him therein, and that by the Judge-Advocate's own advice, who directed us to this course, which he affirmed to be both legal and usual; That in the civil law, especially in courts martial, trials were as usual *testimoniis*, as *testibus viva voce*: That in the Admiralty, (a civil law court) as likewise in the Chancery, Star-Chamber and English courts, formed after the civil law, they proceed usually by way of deposition: That even at the common law in some cases, depositions taken before the coroner, and examinations upon oath before the chief justice, or other justices, are usually given in evidence even in capital crimes: That the high court of parliament hath upon just occasion allowed of paper-depositions in such cases: That in all courts-martial, both in England and elsewhere, they have been constantly allowed, and particularly in the late famous case of Tomkins, Challoner, and other London conspirators, whose examinations were read, and given in as evidence one against the other, upon which they were condemned and executed. Besides, there was both very great reason and necessity that such depositions should be admitted in this case, and in all martial proceedings of this nature, because divers of our material witnesses, being officers or soldiers now in actual service, and dispersed upon several occasions into divers brigades, and parts of the kingdom remote from St. Albans, could not without great danger, disservice to the state, inconvenience to themselves, and excessive costs, be drawn together personally to attend this trial, which had been so frequently adjourned, not only from week to week, but place to place: That we several times petitioned both the commons house and his Excellency, that the council appointed for this trial might be held at a certain day and place, within London or Westminster, before our wit-

nesses were dispersed, and where we could with less trouble and expence to ourselves and them, have produced all or most of them *viva voce*; but yet we could not (through the Defendant's procurement, as we conceive) obtain this reasonable request: Therefore himself being both the cause and precedent of these our depositions, and of removing the Trial to this place, for our greater incommodation and expence, ought not to take advantage of his own wrong, against a maxim of law, the constant practice of the court-martial, and his own leading example, which we did but imitate. Which point the council did upon solemn debate among themselves clearly over-rule against the Defendant, upon the premised reasons.

To the second Exception, concerning sir William Waller, Mr. Prynne most solemnly protested for himself to the council, that it was a most false and malicious slander; that neither sir Wm. Waller, nor his lady, nor any other in their behalf, did ever directly or indirectly excite, advise, or encourage him in this prosecution; that the delinquent himself was the only man who unadvisedly put himself upon this trial, as appears most evidently to all the world, by the close of his printed Relation in the Parliament House, where, page 13, 'He desires the house of commons, that they would be pleased to let the truth of what he had then affirmed to them (concerning the 'surrender of Bristol) be examined at a council of war, that so he might be cleared or condemned, as they should find the truth or falsehood of what he had delivered;' by his, and his officers Petition to his Excellency, and his Excellency's Proclamation upon their Petition, posted up at Westminster and the Exchange, wherein he summoned Mr. Walker and Mr. Prynne by name, in the most public manner that might be, and after that by private notes, and sundry other public adjournments, to be his prosecutors; Which thankless office he was not altogether unwilling to undertake, when thus openly engaged by the Defendant; not out of any private malice to the delinquent, whom he formerly honoured, and to whom he never bore any particular spleen, having never received the least injury from him; much less out of any dangerous respects, instrumentally to wreck the private malice or revenge of any others upon him, (it being below his spirit, and most averse to his genius, his conscience, to be subservient or instrumental to any man's malice or revenge whatsoever) but merely out of a real desire to do his country faithful service, and vindicate the truth of this unworthy state-ruining action, under which the whole kingdom now lay languishing, from those false disguises which the Defendant in sundry printed papers had obtruded on the world, to save his own irreparable dishonour. The prosecution therefore proceeding thus merely from himself, as all the premises infallibly demonstrate, he had laid a most scandalous imputation upon sir William Waller (a noble well-deserving gentleman then absent,) and on himself, in the fore-

mentioned exception, for which he demanded justice against him from that honourable council, unless he could make good this calumny, for which he was most certain the Defendant had not the least shadow of proof; the testimony of Dowet, the ground of this aspersion, not referring to him, but only to Mr. Walker's Relation, published long before any impeachment of, or prosecution against the Defendant: which charge Mr. Walker himself there present was ready to answer, as to that particular.

Hereupon Mr. Walker informed the council, That he acknowledged in the Epistle to his Answer to the Defendant's Relation, 'That it was but a collection out of the several reports of divers gentlemen and commanders in that service, before and when Bristol was besieged: which when he had drawn up, having occasion to go to Southampton, he left in the hand of a friend, desiring him to shew it to whomsoever he should think fit, (and especially to those gentlemen out of whose mouths he compiled it) to see if he had hit their sense aright; and that this party (as he was since informed) shewed it to sir W. Waller. He said further, that the written copy was shewed to the Defendant himself, and therefore he doth not wonder if it were shewed to sir W. Waller: and that sir William's speaking to his officers, 'only to declare what they knew touching that business, with reference simply to his Answer,' could not be intended either malice, or combination, or prosecution of this impeachment, not then so much as thought of, nor any prejudice to the truth, since no man can know a falshood, because it is a Non-entity, and can be no object of man's knowledge: That therefore this could be no just exception to sir William as a commissioner, the rather because col. Carre (a man indifferent) was joined with him; much less any legal exception to any officers or soldiers testimony then under his command, who did but testify what they knew for truth. Besides, Mr. Prynn added, that col. Fiennes himself had examined divers of sir W. Waller's officers by commission, before we examined any of them, and some of those whom we examined; and why we should be deprived of the benefit of their examinations for the kingdom's advantage, when himself had examined them only for his private defence, there could be neither reason nor equity alledged, it being a mere artifice, to deprive us of our most material witnesses, and to suffocate the truth.

To the third, of his wanting notice to join in Commission, and cross-examine the witnesses on the other side, Mr. Prynn answered:

1. That himself had begun the precedent, in taking forth several commissions to sir W. Waller's, and the earl of Manchester's army, to examine witnesses there, without our privy or consent, who neither had any the least notice of the commissions to join in them, nor of any the witnesses names, till the hearing, nor had not, nor could not cross-examine them, nor ever yet saw their depositions: And why our depositions, being prosecutors, should not be admitted

as well as his, being not taken so publicly before the Judge-Advocate, as most of ours were, he saw no reason.

2. That we could not enforce col. Fiennes to cross-examine any witnesses, or to join with us in their examination; therefore if he neglected to do it, or went before us in his commissions, as he did, by virtue of which he might have examined all our witnesses if he would, before we had taken their testimonies against him, the default was his, not ours.

That we left all our Depositions, and the Witnesses names, with the Judge-Advocate, to whom he oft repaired, and from whom he might have received the catalogue of them, to cross-examine them, if he pleased; which since he neglected to do, after so many adjournments, and taking no exceptions till now he came before the Council, of purpose to evade his trial, and to elude both them, us, the parliament, and people, whose eyes are on the issue of this business, there was no reason to allow these frivolous exceptions. All which the Council, upon short debate, over-ruled against the Defendant, resolving, that the testimonies ought to be used, unless some particular just exception could be alledged against any of them.

These Obstacles being removed, Mr. Prynn then proceeded to prove the fourth Article; which he did,

First, By the Defendant's own Answer thereunto, wherein he doth confess the whole Article in substance; yea, more than it chargeth him withal, as namely,

1. 'That he never undertook to make good the City or Castle, or either of them, against the enemy; declaring that he would not, nor could not undertake it.' Which is in plain English as much as to confess, that he had never any thought or resolution to hold them out to the utmost extremity, as he ought to have done in honour and duty; but a professed purpose to surrender them to the enemies, traiterously or cowardly, as soon almost as they came before it.

2. 'That soon after the enemy entered the line' (with a very inconsiderable number, not above 150 at first, and three or four hundred in all at last, as the witnesses attest) 'he did surrender the Town and Castle, with all the prisoners, cannons, ammunition, artillery, military provisions, magazines, victuals, and part of the arms,' (all but the horsemen's swords, most of which were likewise taken from them ere they departed the Town) 'before the enemy had taken any of the Out-forts about the same, or had made the least assault or battery upon the walls of the City, or of the Castle, or any mine or breach into the chief fort thereof, (and that before the Town had been three whole days besieged, which he denieth not, and therefore granteth by his Answer:)' Which whether it were not a most clear confession and demonstration of a treacherous and cowardly Surrender, in the superlative degree, he humbly submitted to the honourable Council's judgment, and the determination of all men en-

dued with common reason; and yet the Defendant hath the confidence, in the same branch of his Answer, to deny 'that he did deliver them 'up traiterously, cowardly, or dishonourably, 'or contrary to his former promises,' (which were to dispute every inch of the Town, from the line to the City-gates, and from thence to the Castle-walls, which he would defend to the utmost, and there lay his bones if he could not keep it, and make his flag of truce his winding-sheet, as is proved by divers witnesses,) [Mr. Powel, col. Strode, col. Stephens, Mr. Hassard, capt. Bagnal.] 'or contrary to his trust and 'duty;' and the impudence to affirm, 'that he 'did defend the Town and Castle to the utmost 'point, not only of duty, but also of honour, 'that any soldier could or might have maintained the same.' Which whether it were not the greatest paradox and contradiction, that any military man in his right senses durst ever affirm before a Council of experienced, valiant commanders, he referred to the resolution of all there present.

3. He confesseth, that though 'neither any 'of the outworks were taken, nor the Town 'walls once battered or assaulted, when the 'enemy entered the line, yet as things then 'stood, neither the Forts nor Castle ought to 'have been kept, to the prejudice of the City 'and Garrison, but ought to have been surrendered together with the City, as they were, 'by the constant practice and policy of war in 'all places, the principles of justice and honesty, and the rules of wisdom and discretion.' And he further adds in the clause of his Answer to the eighth Article, 'That he doth affirm and will justify, that if the Castle had 'been tenable, yet neither by the constant 'practice and maxims of war in all places, nor 'by the rules of honesty and Christianity, he 'ought to have held the same.' A riddle which Mr. Prynne professeth transcended the limits of his understanding to enucleate, if not of all men's else, but the Defendant's; and a passage which carried Treachery and Cowardice engraven with capitals in its very front, proclaiming openly to all men, that had the Out-Forts and Castle been never so strong and tenable against the enemy, yet he was so far from resolving to keep them for the Kingdom's and Parliament's security, that he professeth, 'he ought not to have held the same, neither 'by the constant practice and policy of war, 'nor rules of piety or Christianity, but ought 'to have surrendered the same with the Town.' Certainly this gentleman was either resolved to lose his head when he penned this Answer, or else was intoxicated with the panic fear that surprized him at Bristol, (which hath made his pen and brains to stagger ever since) else he durst not put in such an Answer in writing to this Impeachment.

Fourthly, He saith, 'That this surrender of 'the city, castle, forts, with all the ammunition, cannon, magazines, arms, (but troopers 'swords) prisoners, ships, and his very colours, 'before any out-fort taken, or battery made

'against city or castle, was upon good and honourable conditions, in respect to the estate 'he was in.' I think he means himself was in an ill condition, should the king's forces have forcibly taken him prisoner, for that the king had excepted him out of the pardon mentioned in his Answer to the third Article: And therefore out of base fear and self-respects he would rather redeem his head, and buy his peace with the voluntary surrender of a place of such consequence to his majesty, than hazard his life in defending it to the utmost. And withal he adds, 'That this surrender was for the honour, profit, and best advantage of the king's 'dom, and parliament, by whom he was entrusted?' which when he shall be able to demonstrate, or make the parliament and kingdom believe, I shall profess this honourable Council may in justice acquit him; till then, I hope, you cannot but condemn him, even out of these several passages of his own Answer.

Secondly, From his Answer I shall descend to our Proofs, which extend to all the ensuing Articles as well as this: by which it appears:

1. That the Defendant wanted neither men nor ammunition, nor any manner of provision, to defend the City and Castle against the enemy: Not men, for he had 2,000 foot, and 300 horse, besides volunteers, to defend the town; and he might have raised at least 6 or 8,000 able men more in the City, if he had wanted men, which were as many, or more, as besieged it. Proved by the depositions of col. Stevens, Anthony Gale, Arthur Williams, Able Kelly, James Powel, and others.

2. That they wanted not ammunition, for we proved there were 60 (way 70 double) barrels of powder in the castle, with match and bullet proportionable, besides what was in the city and forts, and might have been made weekly in the town, if held out against the enemy; and that by the depositions of Mr. Edward Bainton, Arthur Williams, Joan Batten, major Wood, and others: Besides, himself confesseth in his relation 50 barrels in the Castle only, when surrendered; Mr. Hassard deposeth 50 at least.

3. That they had all manner of provision both in the City and Castle, for three months space or more; the particulars whereof will appear in the Deposition of Nicholas Cowling, Able Kelly, James Powel, Dorothy Hassard, Mary Smith, and others: That himself and others [col. Strode, col. Stephens, capt. Bagnal, Mr. Powel, Mr. Cowling, major Wood, Richard Lindon, Edward Watlin, Mr. Hassard,] deemed the City and Castle strong and tenable; that he promised to hold the same to the utmost; to dispute every inch of ground with the enemy; to retire into the Castle when he could hold the City no longer; to lay his bones there rather than yield it, and make his flag of truce his winding-sheet. If then the place were so strong and tenable, and he wanted neither men, nor ammunition, nor victuals, to defend the City and Castle, his surrender of them must of necessity be adjudged traitorously, or unwisely.

ardly at least, if not both: for what else but treachery, or cowardice, or both conjoined, could move him to this surrender, in less than three days siege, before the utmost extremity, contrary to the laws and ordinances of war, whenas he wanted nothing necessary for a brave defence?

Secondly, We have proved that the town and castle were not besieged three whole days: for the siege itself began but the Monday morning, and the articles of surrender were agreed on before Wednesday night, and the surrender executed before 9 of the clock the Thursday morning: as col. Stephens, col. Strode, Able Kelly, and others testify.

Thirdly, That the enemies were generally repulsed on all quarters of the city, with extraordinary great loss of men, near 700 of them being slain, and as many wounded, with the loss only of six or eight of our men: and that but 150 of them, or 200 at most, entered the line the Wednesday morning before sun-rising (near three of the clock) and were so afraid of being cut off, that they gave themselves all for dead men, and might have easily been cut off, none of their own party knowing of their entry till two hours after they entered, nor sending them any relief. Attested by Arthur Williams, Joseph Proud, James Coles, Mary Smith, serjeant Wm. Hill, Stephen Radford, Michael Sparks, and others.

Fourthly, That major Langrish and his horse-troops, which had the guard of that place, and two other captains of horse under him, never once offered to charge the enemy, whom they might easily have cut off, but retired into the city without charging them: That Langrish (very intimate with the Defendant) had been formerly complained of to him, by lieutenant Clifton, col. Stephens, and others, for his extraordinary cowardice and negligence, who desired he might be cashiered to walk the street, as unfit for any charge; yet the Defendant continued him in his place, and set him to guard that very weak place, where the enemy was likeliest to enter. Proved by Joan Battin, col. Popham, col. Stephens, and capt. Nevil, lieutenant Clifton, capt. Husbards, and capt. Vaughan, (Fiennes's own witnesses) upon cross-examinations before the Council.

Fifthly, That the day before the enemy entered, one Thomas Munday, a soldier under capt. Henry Lloyd (as both their Depositions witness) pointing with his finger to the very place where the enemy entered the next morning, told major Langrish in the hearing of col. Fiennes: 'Captain, yonder is a very suspicious place not fully fortified, and it is very doubtful; unless you set 100 musketeers more there, it being weakly manned, the enemies will there make their first breach.' Whereupon col. Fiennes for this his good advice, in an angry manner asked him, 'What, doth he prate?' and called him 'Saucy Knave.' And Langrish having the guard thereof, suffered the enemy the very next morning to enter that line at the same place, from which he retired with

his horse without any charge or resistance; whenas he might easily have repulsed and beat them off. Yet the Defendant never questioned nor complained against Langrish for this his Cowardice and Treachery, which was the only real occasion of surrendering the City, but countenanced and justified him all he could, affirming in print, that he was acquitted by a council of war of cowardice, (which was false;) and endeavoured to lay the blame of not charging upon one lieutenant Rouswell, who was so far from being guilty of this fact, that seeing Langrish with his troop quit the breach without charging, he called him coward, and with three or four musketeers only marched up to the enemy, and made good the breach for a time, till he received so many wounds (whereof he after died) as forced him to retreat for want of seconding; he affirming, that if he had been seconded by the horse, or with 20 musketeers more, he could easily have repulsed the enemy, and made good the breach. Yet this dead man must be thus traduced to save Langrish's credit, though capt. Husbards (one of the Defendant's own witnesses) confessed, that Langrish's cowardice, in not charging, was the loss of Bristol, and that he told him so openly to his face, at a meeting in London, since the surrender.

Sixthly, That for two or three hours space at least, the few enemies who first entered had no relief nor supplies sent to them, neither indeed could have, the enemy being bravely repulsed with great loss in all other places, so as they retired in disorder to their quarters; and one whole regiment of their horse retreated as far as White-Church, four miles from Bristol, with a resolution never to come on again, had not the message of the unexpected parley, and hopes of the city's surrender thereupon, drawn them back to their quarters: And that divers of the enemies confessed, if they had then been repulsed or beaten out of this breach, they had raised their siege, and never come on again. Serj. Hill, major Wood, James Coles, depose all this, and the Defendant's witnesses confessed it.

Seventhly, That from three in the morning, when the enemy entered, till about 10 or 11 o'clock at least, there was no charge at all made, except only with Rouswell, and after by capt. Nevill, who charged them down-hill only with 20 horse, an hour or more after their entry, and could have then beaten them out, as he verily believed, and attested upon oath, had he been seconded with 30 or 40 horse or musketeers. A very strange neglect, to suffer the enemy to lodge so long within the line, ere they were encountered.

Eightly, That upon the enemies entry col. Fiennes, instead of commanding the next guards and companies then at the out-works, to fall upon and beat them out, as he was pressed to do by lieutenant Davison, major Wood, capt. Bagnall, Mr. Denne, serj. Hill, and others, commanded upon pain of death by his lieutenant Clifton, to draw off the line and works on that

side of the city the enemy entered, and to retire into the city with all speed to the market-place, full sore against their wills: whereat divers of the soldiers [Joan Battin, Wm. Whitehorn, serjeant Gale, captain Bagnall, Thomas Munday] were very much discontented and discouraged, and many of them said, 'They were betrayed.' Whereupon they retreated from the line and out-works in great disorder, many of them leaving not only their swords, muskets, powder, bullets, but their very cannons behind them, which might have been easily drawn off, being down the hill, and many colliers horses ready at hand for that service; at which the gunners were so discontented, that some of them spiked and nailed up their touch-holes, to make their cannons unserviceable to the enemy, and the city garrison too, in case they had returned to the works and line; which by this strange soldiery, were left naked of all defence near two miles space together, so as the enemy might have entered the line where they pleased, in sundry places of greater advantage, nearer to the City, Castle, and Suburbs, by much, than where they had made their first entry. Which strange device and unmilitary policy, if it savoured not of apparent treachery, yet at least it cannot be excused from extreme folly, and want of skill in martial affairs; which made major Lewis, and other of the best experienced soldiers (who advised not to draw off the line into the City, but to fall presently on the enemy from the line itself, which was the nearer, best, and speediest way) exceedingly discontented.

Nimblely, That when the soldiers were thus hastily and confusedly called from the line into the market-place, they there stood idle, looking one upon another, without any command to make a sally, or do any other service to secure the City [captain Bagnall]; whereupon, for want of command and employment, divers of the soldiers who had been upon duty at the line four or five days and nights together, departed from their colours, some to the tavern, some to the ale-house to drink, others to their beds to sleep, so as their companies were broken, and not half full: whereas if they had marched orderly from the line, against the enemies, when they first entered it, which was far the best and shortest way; or made a sally as soon as they retreated from the line, these inconveniences had been prevented, the soldiers kept in heart, the enemies cut off, or beaten out, the breach made up, and the City preserved.

Tenthly, That when the sally was made [major Wood, William Whitehorn], not before, but much about eleven of the clock, it consisted not of above 200 men, and that of those called off the line, the fresh men at the main guard, and capt. Stoke's company purposely kept for a reserve, with the garrison soldiers in the castle, (who were not in the fight at the line, and might have made a present sally, without calling any from the line) being not employed on this service.

Eleventhly, That when the enemy upon the sally, though late, were driven from house to house, and so beaten that they let fall their arms, and cried for quarter; and when the women were so courageous, that they proffered to go with their children unto the cannons mouth, to dead the bullets, in case the soldiers were afraid, rather than the City should be yielded, and thereupon encouraged both the gunners and soldiers to fight, working in the very face of the enemy, and stopping up Froom-gate with a very thick work (made with earth and wool-sacks) where the enemy should have entered the City; yet such was the defendant's extraordinary cowardice, that he even then sent twice out to the enemy for a parley, whereas the soldiers generally desired and offered to fight it out to the utmost [serjeant Gale, Joan Battin, Mr. Hassard, Thomas Munday]: which so much discontented divers soldiers, that they said they were betrayed, and in very anger brake their muskets, swords, pikes, lest the enemy should gain them, swearing that they should never serve the Parliament more, and taxing the Governor for his parley and cowardice.

Twelfthly, That the castle was surrendered, the prisoners released [major Wood, colonel Strode, and others], the enemy admitted into the town, long before the hour agreed on, through the defendant's hastiness; yea, the soldiers and townsmen pillaged before his face: yet he took no care to see them righted, but left them to the spoil, neglecting to take hostages to see the Articles performed; which, contrary to the rules of war, were not made between prince Rupert, the king's general, [Richard Winstone, capt. Husband, and others] and the Governor, but between him and the prince's commissioners only: and that he made such haste to quit the town, that he left capt. Blake, and capt. Husbards, in Brandon-Hill and Prior-Hill forts behind him, never giving them notice of the articles, nor any warrant under his hand to surrender them to the enemy, to the endangering of their lives and liberties.

Thirteenthly, That col. Fiennes being moved to send away the prisoners before the siege, refused, saying, 'He would keep them there to make his own conditions the better;' thinking of nothing before-hand, but to surrender the City, to save himself: that he told [Mr. Talboy's deposition] Mr. Tolboy, that he should not be in Bristol for ought he knew at St. James-tide then next ensuing; and used such expressions to him, as made him believe he meant to surrender the town by that time, (as he did the very next day after St. James's feast) who thereupon left the City, as intended to be surrendered by the governor. That he commanded Mr. Hassard to lay by a reserve of 30 barrels of powder, with match and bullets proportionable, to which when he was reduced he would treat [Richard Butler's testimony]: that there were about 140 granadoes in the Castle, and one new mortar-piece, and that John

Warden, one of the gunners of the Castle, did often importune the defendant to give him leave to make a shot at the enemy out the said mortar-piece, but the defendant commanded him, under pain of death, not to make any shot at them: whereat the said gunner was so grieved, that he oft complained the Town was betrayed. All which granadoes with the mortar piece were surrendered to the enemy, and not one of them shot against them, though they shot many granadoes at the town and garrison.

Fourteenthly, That the Castle and Forts were very strong and renable, if not the Town; that the Defendant himself, the Colonel Stephens, colonel Strode, Mr. Powel, major Wood, captain Bagnal, Thomas Munday, Richard Lindon, Edward Watlin, Nicholas Cowling, Joan Battin, Nicholas Coles, Mary Smith, Ethelred Huddy, Michael Sparks, and others, attest this] townsmen and soldiers reputed them so; that they might have been held divers months, yea to this very time, had not they been surrendered; that the enemy could not have taken them by force, even by their own confessions, nor all the devils in Hell have taken the Castle, had not the defendant, beyond their expectation, surrendered them basely into their hands, and bestowed them upon him; for which surrender the very enemy called him a base coward, and said he deserved to be hanged for delivering up such a town and castle as that to them so easily, for which they might thank Fiennes, else they could not have won them by force, had not he bestowed them on them beyond their hopes. From all which particulars, fully proved, we conclude, 'That the Town, Castle, Ammunition, Cannons, Arms, &c. were most dishonourably, cowardly, and treacherously delivered up to the enemy, and that without and against the Parliament's or his Excellency's previous consents, who abhorred the fact, and never gave the least way thereunto, being executed before they had any thought or tidings of it, and before the City and Castle was reduced to any extremity.' And thus was concluded the second Day's Work.

The sum of the Defendant's tedious Defence, consisted of the ensuing Particulars, to every of which, for brevity and perspicuity sake, we shall subjoin the distinct Replies then given, not in a continued Speech, as they were uttered, but in parcels, as each part of the Reply, Rejoinder, and Surrejoinder was applied to each part of the Defence.

First, The Defendant denied, 'That all the arms were surrendered to the enemy; for it appeareth, by the first Article of the Surrender, that all the officers of horse and foot were to march out with their full arms, and the troopers with their swords.'

To which Mr. Prynne answered, 'That by the first and tenth Articles of Surrender, all the common foot soldiers were to march out without arms, and the troopers only with their

swords, leaving their other arms, together with all their cannons, ammunition, and colours, behind them; therefore since all the arms of the foot, all the troopers arms but their swords, (which were not many nor considerable) with all the cannons, ammunition, colours, were thus surrendered, the words of the Article of Impeachment, 'that all the cannons, ammunition, arms, &c. were surrendered,' were sufficiently and literally proved.

2. That *all*, both in scripture, law, and common parlance, is frequently taken for the 'greatest part' or 'well nigh all,' as Mat. ii. 'Herod was troubled and all Jerusalem with him.' Mat. xxi. 10. 'All the City was moved, saying, Who is this?' 'All men think so;' 'all affirm it;' they have taken *all* their 'arms, baggage,' and the like: where *all* is taken for the 'greatest part,' or '*all* in effect.' And in this sense the Article is true, since the officers arms, and troopers swords, in respect of all the other arms there left, were not considerable.

3. Most of all the officers arms and troopers swords were taken from them by the enemy, as the Defendant confesseth in his Answer, and we have proved; and if any escaped with their arms by chance, yet all their arms were quite lost as to the state, which had no benefit by, nor account of them: therefore in this regard the Article is most true.

Secondly, He denied 'he surrendered the City and Castle against the Parliament's and his Excellency's consents, though it is true he did it without their previous consents.'

To which Mr. Prynne replied, That this was a very frivolous distinction: For 1. Christ himself by this speech, 'He that is not with me is against me,' resolves, that what is done without the Parliament's and his Excellency's consents (especially if they dislike and disavow it afterwards) is done 'against their consents,' and that in strict propriety of speech: hence, if a man's servant, cattle, without his privacy or approbation, commit a trespass, in his neighbour's ground, or if one casually tread upon another's toe, he usually saith in these and such like cases, 'It was against my will, or against my liking and consent.' Bristol therefore being undoubtedly surrendered not only beyond, but contrary to the Parliament's and his Excellency's expectations and desires, was certainly surrendered against their wills and consents, as well as without them.

2. The Parliament's and his Excellency's express will and intention was, that Bristol should be kept to the utmost extremity, and not surrendered to the enemy, this being the end wherefore they placed a governor and garrison there, and made works about it: the surrendering therefore of it, contrary to both their express wills and directions, must needs be not only without, but against their wills and consents. This all the world knows, unless the Defendant can shew their express consents thereto.

3. The House's and his Excellency's former

opinions of, and calling him to an account heretofore, and now into judgment for this Surrender, as directly contrary to his trust, and their directions, is a sufficient proof it was not only besides, but against their consents: and to think or speak otherwise, is but to lay a grand imputation on the Parliament and his Excellency, in making them accessaries to this dishonourable, traitorly action, which hath almost lost the kingdom.

Thirdly, He alledged that four days before the siege he sent one Scotten with a Letter to his Excellency, to acquaint him with the weakness of the garrison, that he had not above 900 men besides citizens, as likewise to see the estate of his army, and crave speedily succours from him: That he found his Excellency had but 4,000 foot able to march, many of his men being then sick, and not in a marching condition to relieve him; that it was clear, they could not expect, nor have had any relief in six or eight weeks time. And to justify this despair of timely succours, he produced a Letter written by his Excellency to the lord Say, his father, to this effect; 'That he was sorry Bristol was in so much danger, as by col. Fiennes Letter to him it seemed to be; and that himself at that present was not in a fitting posture to relieve it, which troubled him the more, for that his lordship's son was engaged there.' (which Letter being read, Mr. Prynn inquiring the date thereof, found it dated the 28th July, two days after the Surrender of Bristol, which was on the 26th of that July.) From all which the Defendant inferred the necessity of surrendering the Town and Castle, for want of succours: which had they been near, he could have made a shift to have held out three or four days longer, and would have done it: but being hopeless of relief, he could not in point of soldiery or policy have held it longer than he did.

To which Mr. Prynn replied, 1. That he did but his duty in sending thus to his Excellency, and that this would no more excuse his Treachery and Cowardice in surrendering the Town, than Weston, Gomineys, and the bishop of Norwich, their sending to the governor of Calais, and the lords of the council, for timely relief, did excuse them.

2. That in this Message and Letter to my Lord General, but four days before the siege, he complained neither of want of ammunition, victual, monies, nor of the weakness or intenuability of the works, town, or castle, (which doubtless he would have done had there been real cause) but of the smallness of the garrison, which he said were then but 900, besides citizens. But our Witnesses [Colonel Stevens, Arthur Williams, Able Kelly, major Wood, and others.] prove expressly, that at the time of the siege he had at least 2,000 foot and 300 horse, besides volunteers, which were near 200 more: and major Allen attested, that he brought near 200 men well armed from Malmesbury, but a day or two before the Siege; so as his 900 men were in-

creased to 2,500 men, or more; and he might have raised (as Mr. Powel his own witness attested) at least six or eight thousand able men more, to bear arms, in the City, had he wanted men: Therefore the want of men was but a pretence. Besides, had he needed only men, why did he advise sir W. Waller to march out with at least 500 horsemen lest they should have helped to have spent the provision of Bristol? as he confesseth in this Relation; p. 12. Certainly, either he thought the Town tenable with the men he had, till all the provision in it were spent, and so the garrison strong enough to defend it whilst they had victuals, or else he desired rather to spare the victuals for the enemy, (to whom they were surrendered) than for sir W. Waller's men who (had they staid in the City) would have made up his garrison 800 horse, besides 2,000 foot, and in all probability have preserved the City, which was partly lost (as himself confesseth) by the cowardice of the horse, who refused to charge the enemy when they entered, whom they might easily have cut off, had they but charged them, as they might and should have done. In brief, the Defendant's own Relation and Letter to his Excellency inform us, that his garrison consisted of at least 2,000 foot, and 300 horse, and was so strong and sufficient, that when the enemy stormed the Town on every side with all their forces, they were valiantly repulsed, with the loss of near 1,000 of their best men, besides 700 wounded; whereas he lost not above six or eight men at most, and had very few or none wounded. If then the garrison were thus sufficiently strong to repulse the enemy with so great loss, when their army was strongest and best in heart, much more must it be sufficient to repulse them, and keep the Town, when near 1,000 of their best men were slain, and 700 more wounded, with the loss of six or eight only of the garrison, the assailants being much weakened, and defendants as strong or stronger, and more courageous, by reason of their good success, than they were at first.

3. To his despair of succours in six or eight weeks time, by reason of the weakness or sickness of the army, it was answered, (1.) That as hope is the last thing that forsakes a valiant man, so it is the first that deserts a coward, who placeth his confidence any where rather than at home in his own bosom.

(2.) That no man, much less a Christian and soldier too, ought to despair of God's providence and protection in a just cause, even where he can see no human probability of succours; but ought to 'wait and trust on God to the utmost extremity,' who many times sends relief, 'exceeding abundantly, beyond all men can ask or think,' as he did to Jerusalem, Samaria of old, and to Rachael of late. *Audaces fortuna juvat*, was the heathen observation: *fortes Deus adjuvat*, the Christians. His causeless despair then of timely relief from God or man, the Parliament or his Excellency,

argued not only want of courage, but faith too, both in God and man.

(3.) Valiant Massey, if this plea might be admitted, had far more cause to despair of timely relief than the Defendant, for both Fiennes and Clifton his lieutenant professed openly, after the Surrender of Bristol, 'That they would be hanged if Gloucester could hold out two days, if the enemy came before it;' and col. Pury and capt. Parry deposed, 'That the walls and works about it were weaker than Bristol's, their garrison not above 1,500, club men, and all their powder not above 32 single barrels, besides what they made during the siege, their provisions not so plentiful as Bristol's, their cannon but seven or eight;' whereas Bristol had 55 cannon, besides sir Francis Popham's pieces; the enemies before Gloucester almost 10,000 more than those that besieged Bristol, and likewise accompanied with the King's personal presence. Besides, his Excellency's Army by reason of sickness, was now far weaker, and more unable to relieve Gloucester, than it was when it should have marched for Bristol's relief; yet notwithstanding all these discouragements, and the great damage and discouragement the sudden unexpected loss of Bristol struck into all mens spirits, Massey and Gloucester men did not basely yield up the Town to the enemy, as soon almost as they came before it: but relying on God's providence, and the Parliament's care to the uttermost, received timely relief from both; in less than three weeks after they sent for succours: as Bristol doubtless would have done, had col. Fiennes had so much true faith and valour as Massey had.

Now, that Bristol would have been relieved far sooner than Gloucester, Mr. Prynn proved by these Arguments:

1. Because my Lord General's Army was in a far better condition almost by half to march when Bristol was besieged, than it was at the siege of Gloucester, the number of it being much decreased by sickness in the interim, and their courage and spirits much daunted by Bristol's unexpected Surrender in so short a time, upon such dishonourable terms, which he doubted not all the whole Council present could experimentally attest.

2. The Parliament, his Excellency, London, and the whole kingdom, looked upon Bristol as a place of the greatest consequence of any in England, next to London, as the metropolis, key, magazine of the West, which would be all indangered, and the kingdom too by its loss; as a town of infinite more consequence than Gloucester; by the gaining whereof the enemy would be furnished with all manner of provisions and ammunition by land, with a navy and all merchandize by sea, and enabled to bring in the strength of Wales and Ireland for their assistance: Therefore being of so great concernment, the Parliament, his Excellency, London, and the kingdom, would have been far more careful to relieve it in due time, than they were or would have been to relieve Glou-

cester, of which they had yet a special care.

3. Bristol was a town of far greater commerce with London than Gloucester, many Londoners having a great part of their trading and estates too in it; therefore this particular interest would have made the Londoners more forward to march to relieve Bristol than Gloucester.

4. Col. Fiennes and the citizens of Bristol had more powerful active friends in both houses, and about his Excellency, (as his letter to the lord Say imports) to solicit and expedite their relief, than Massey or Gloucester had; therefore though the Parliament and his Excellency were very ready to have sent timely relief to both, yet in all probability Bristol, in these respects, had been sooner relieved, had it held out, than Gloucester was or could have been; the rather, because the loss of Bristol made many men fall off from the Parliament, more to stand as neutrals, and damped the activity and spirits of most men.

(4.) It was answered, that the Defendant produced no Proof of his despair, but only his Excellency's letter written and sent to the lord Say, not to him, and dated two days after the Surrender made. This therefore could be no ground, no cause at all of the Surrender, which so long preceded it.

To supply this oversight and defect, colonel Fiennes next day produced a witness, to prove, that the day before the Surrender there came one into Bristol, who reported that the Lord General's army was very weak, and in no posture to march. But who it was, or whence he came, or how he came in thither, the Town being beleaguered, or whether the Governor ever had any certain information of this report, there was not the least shadow of proof.

(5.) It was replied that if a Governor's groundless surmise of an improbability of timely supplies, might be a good excuse to surrender a Town, the strongest, best furnished Towns and Forts in the kingdom might be betrayed, surrendered to the enemy in a moment under this pretence. Col. Massey might then upon far better grounds have surrendered Gloucester to the king the first day: the earl of Stamford, Exeter; and col. Warnlow, Plymouth, the second day they were besieged; than the Defendant Bristol on the third day, since there was a far greater improbability of relieving any of these in time, than of Bristol. And by this reason, had col. Fiennes been furnished with men, ammunition, victuals, to have kept the Town five or seven weeks longer, yet, by this way of arguing, he would certainly have surrendered it when he did, (in less than three days space) and not have kept it to the fifth or seventh week's end; because he conceived an improbability of relief in eight weeks time, out of a panic fear, or out of a mere design to colour his Surrender. He should have therefore held it to the uttermost extremity, and God, or our vigilant Parliament, no doubt, by that time would have sent relief, as they did to Gloucester; or if none had come, he had then

discharged his duty, and been excused; but since he kept it not to the last, but prejudged God's, the Parliament's, and his Excellency's care to relieve him in due season, his fault is inexcusable and capital.

Fourthly, He alledgeth, 'That he did not surrender the City, Castle, Arms, &c. traitreously,' and that that no treachery was proved against him.

To which Mr. Prynne answered: 1. That though there were no direct proof of any correspondence or intelligence with the enemy; yet if they were surrendered before uttermost extremity, the very law itself, and the Letter of the Ordinances for war, resolve this to be Treason. And being thus Treason, even in point of law, he needed no other proof that it was traitreously surrendered, but the law and fact itself: And we ought to charge it in the impeachment, that it was 'traitreously surrendered,' as the law resolves it to be, else the impeachment was not good in law, neither could judgment be given on it. Hence by the rules of the common law, if a man be indicted of any crime which is treason, felony, or burglary by the law, the indictment must run, that he committed the crime, *proditore, felonice, or burglariter*, else the Indictment is vicious and defective. Therefore, by like reason, the surrendering of any Fort, before utmost extremity, being treason, it ought to be charged in the Articles, 'That it was treasonably surrendered,' and for this end was inserted the word 'Treasonably,' in the Articles.

2. It was answered, That Fear and Cowardice were the most traitorly passions of all others: These have caused many to betray their own reason, senses, liberties, laws, estates, trust, friends, countries, kingdoms, souls; whence we find the fearful, marshalled in the very front of those, 'Who shall have their part in the lake that shall burn with fire and brimstone;' and quite 'exploded out of God's temporal and spiritual militia.' Therefore if he surrendered them out of fear or cowardice only, though without any traitorly compact with the enemy, the surrender is properly styled 'Traitorous,' as well as 'Cowardly,' even in reality and law.

3. It was answered, That though there were no direct treachery charged or proved in the 4th Article, yet there were vehement presumptions, suspicions of it, which oft-times cast and condemn persons, murderers, traitors, as experience manifests, as well as positive proofs, directly charged, and should be proved against him in the seventh; which we would here make use of and bundle up together. First then, his own frequent Confessions in his Answers, 'That he never undertook to keep or not deliver the City or Castle to the enemy without the Parliament's and his Excellency's previous consents: That they neither in honour nor justice could expect such a promise from him: That he ought not to have kept the Castle when the enemy had entered the line,

'but ought to have surrendered the same, although tenable, to the enemy, together with the City, by the principles of honesty and justice, the rules of wisdom and discretion,' &c. coupled with this wilful 'misinforming of the council of war,' when they met about a parley, 'that there were not above 20 barrels of powder left in the Castle,' (whence they were 70 French barrels, besides what was in the Fort and City) and not above 3 or 400 weight of match: and commanding Mr. Hassard the store-keeper to say there was no more, as he confessed to capt. Birch, whence Mr. Hassard deposeth there were 50 barrels of powder, and at least 1,400 weight of match, besides as much more as 4 horses could draw, brought into the Castle that morning (as Arthur Williams and Joan Batten deposed) and 140 bundles, as capt. Bushe affirmed, of purpose to draw the council to a present parley and surrender, were vehement presumptions, and circumstantial proofs of treachery and indirect dealing: All which being compared with the Depositions of capt. Lloyd and Thomas Munday, That the Defendant called Munday 'saucy knave, when he informed him and Langrish of the danger and weakness of the very place where the enemy the next morning entered, refusing to strengthen the guards there as he was advised by him,' and appointing major Langrish (a noted coward, formerly complained of to him for his cowardice and negligence) to guard this weakest place, who never once offered to charge the enemy, but gave them leave to enter, and yet he never questioned him for this treachery, but countenanced him by his favour, justified him in print, and produced him before the council as a competent witness: With his refusing to send away the prisoners in the Castle before the siege, upon sir William Waller's advice; saying, 'That he would detain them there to make his conditions the better if the enemy came before Bristol' (attested by sir William, col. Cook, and confessed by himself) with his speeches to Mr. Talboyes, (who moved him to respite a Delinquent's payment of a sum of money till St. James-tide, then ensuing; that he knew not whether he should be at Bristol, at St. James-tide, &c. which made Mr. Talboyes then presently conceive he intended to surrender the City about that time, (as he did the next day after St. James's day, viz. July the 26th, 1643,) whereupon Mr. Talboyes presently removed and left the City; with his prohibiting John Warden the Gunner, (as Richard Butler deposeth) 'under pain of death, to shoot any granadoes at the enemy, when he pressed him that he might do it,' which made him say, 'they were betrayed.' All these particulars laid together, and coupled with capt. Roper's Deposition, that the lady Newport told this as a special secret to the countess of Desmond, at her being in Oxford, a little before Bristol was besieged, that this city would be surrendered to the king as soon as his forces came before it; (which capt. Roper further attested from the

mouth of the right hon. the earl of Denbigh, that there were divers wagers laid at Oxford, and offered to be laid in and near London, as soon as the siege of Bristol was spoken of, that this Town would be surrendered the 26th of July, the very day it was afterwards yielded up; the calling his men off the line under pain of death, and not suffering them to fall on the enemy, which made many then say, 'they were betrayed,' with his late and slender salley. All these particular circumstances annexed to the premises, and subsequent matters seriously pondered, are sufficient to make a vehement suspicion, if not a punctual evidence, that Bristol was not only cowardly, but traitorously delivered, as well in a proper as a legal sense, notwithstanding the Defendant's flourishes to the contrary, till time shall discover the obscured secrets of this mystery more apparently to the world.

His Fifth Allegation was, 'That the Town and Castle were not cowardly surrendered.' Before he came to make this good by Proofs and Arguments, he first excepted against our Witnesses to prove the Surrender cowardly, because some of them were women, others enemies, who were not competent witnesses, and were ready to slander their opposites.

To which Mr. Prynn replied, 1. That some of the witnesses only were women, and those seconded by men. 2. That they declared not their own weak opinions, but the judgments of men; yea of the enemy's own commanders, in private serious conference among themselves, as well as in open discourse to others. 3. That these women-witnesses, and other females in the City, shewed more true courage and undauntedness than the Defendant and some of his officers, working boldly in the face of the enemy, where they durst not appear; opposing a Parley when he sent out twice for it, and offering to go in person with their children into the very mouth of the cannon to dead the bullets, if the soldiers were afraid, rather than the City should be surrendered; Being then such masculine females as these, he thought them meet witnesses to prove the Surrender cowardly. 4. To the testimonies of the enemy he answered, that it was in this case the best and strongest of any other, it being the natural disposition of every soldier that takes any strong Fort or City, to extol the enemy's valour, and difficulties of winning it as much as possible, the more to advance their own prowess. It is no great honour, in any man's judgment, to conquer a coward, or place not tenable; therefore those who detract from their enemy's valour or strength, derogate most from their own honour, conquest, prowess, and as much disparage themselves as their enemies thereby. Since then the enemy, both in private discourses among themselves, and in conference with others, so frequently censured this surrender as cowardly, taxed the Defendant for a coward, and confessed they could not have taken the Town, nor all the devils in Hell the Castle, had the Defendant held them valiantly out against them, and not cowardly surrender-

ed them beyond their expectation; their testimonies, backed with the premises, [Mary Smith, Ethelred Huddy, Joan Battin, Joseph Proud, Mich. Sparkes, Nich. Collins,] must be a most convincing evidence in this particular.

Secondly, he objected, That Mr. Prynn had been tampering with some witnesses, and urging them to testify against him; for which he produced two instances: The first was, that Mr. Prynn urged Mr. Hassard, who kept the stores in Bristol castle, to attest there were no more than fifty barrels of powder therein when it was surrendered; inasmuch that Mr. Hassard told him, he would not go against his conscience. Secondly, that he meeting with lieutenant col. Davison in the street, offered him a quart of wine, pressing him to go to a tavern, and to set down what he could attest touching his advising col. Fiennes to sally out upon the enemy as soon as they entered, and his dislike of drawing his men from the line, and his refusing to follow this advice: which he denying to do, Mr. Prynn told him that he was engaged to give in his testimony, because col. Fiennes had given him the lye in print, in his reply to Mr. Walker. And for proof hereof he produced two witnesses, that Davison told him this story in his chamber in Arundel house, in the presence of the lord Say his father.

To which unexpected false calumny, Mr. Prynn returned this answer, which he was ready to attest on his oath: First, That being summoned by the Defendant himself to appear before a Council of War, to make good what he had written concerning the Surrender of Bristol, he did thereupon repair to Mr. Hassard, and other witnesses present at the siege, to desire them to witness the truth only of what they knew touching that action, which he might lawfully do: and because Mr. Hassard kept the magazine, he desired him to inform him how many barrels of powder there were in the Castle when it was surrendered; who thereupon answered, there were fifty: upon which he demanded, whether there were no more than fifty? for he had sundry witnesses to prove that he confessed to capt. Birch and Arthur Williams, that there were sixty; and to major Wood, that there were seventy barrels left when it was surrendered; and capt. Bushel (then prisoner) affirmed he found no less than seventy barrels there: if then there were no more than fifty, he should do well to declare the utmost number which he certainly knew to be there. To which he answered, he did think there were more than fifty barrels, but how many more he could not certainly depose; and therefore he would rather testify less than there were, in setting down fifty generally, without adding his negative to it, 'and no more', which he durst not swear, for then he was sure not to wrong his conscience. To which master Prynn replied, that he desired him by no means to wrong his conscience in testifying more than the truth, but to keep a good conscience in witnessing the full truth, and not concealing any thing to smother truth. At last Hassard

said, that he was not willing to appear against col. Fiennes, for he had lost most of his estate in Bristol, and that there were arrears of pay due unto him, for payment whereof the Colonel had lately given him a bill under his hand, and if he should lose his arrears, it would go hard with him. Whereupon master Prynn then answered, he would not press him to any thing to his prejudice, and so left him, he promising to give in his Deposition in writing to the Advocate, which he never did. And whether this were tampering with witnesses, or who had tampered most with Hassard, he or the Defendant, against whom he was unwilling to testify the truth, or all the truth, he humbly submitted to their honourable judgments.

Secondly, For lieut. Davison, Mr. Prynn protested, he never saw the man till he came voluntarily to him in Westminster-Hall, and told him freely, without any inducement on his part, that he was in the siege of Bristol under col. Fiennes, and after that in the siege of Gloucester; from whence coming lately to London, he met with a printed book writ by col. Fiennes in disgrace of Mr. Walker, wherein he had given him the Lye, and a base Lye in the margin, to his dishonour; whereupon being sensible of this open injury, he repaired to col. Fiennes to Arundel house, and there in the lord Say's presence, challenged him for giving him the Lye in print without cause, desiring him to give him public satisfaction, or else he would take satisfaction himself, for he would not take the Lye from any man in England: and withal told him to his face, that he did advise him not to draw the soldiers from the line, but to fall upon the enemies presently, and cut them off, as they might have done with ease; but he rejected his advice, called off the men, and so not making a timely salley, lost the town. Whereupon the lord Say answered, 'Sua, you must take heed how you wrong any gentleman of quality, especially in print; and if you have wronged this gentleman, you may do well to right him.' Upon which col. Fiennes confessed before his father, he did give him such advice, and that he had done him wrong in putting the Lye over against his name: but it was much against his will, through his boy's negligence; for after he had sent the copy of his reply to the press, wherein the Lye was written in the margin against his name, he remembering this mistake, sent his boy purposely to the printer to charge him to blot it out and not print it, which it seems his boy then neglected; but he would see it put out in the next edition. Whereupon I seeing his freeness with me, and thinking his testimony material, told him that the Surrender of Bristol was now brought into question before a Council of War by Mr. Fiennes himself, whom I and Mr. Walker were summoned to prosecute; and therefore we should desire his presence as a witness there, and so we parted then. Soon after the Council of War was adjourned; and then meeting with lieut. Davison (who made the same relation to above twenty more, in Westminster-Hall, as he had done to

me) he told me he was going suddenly out of Town to Gloucester: I desired him to testify his knowledge touching the premises before the Advocate ere he departed; whereupon he told me, that the lord Say was his very good friend, and had promised to help him to his arrears, and therefore he was loth to appear in the business, there being other witnesses sufficient. To which I answered, I would have the Judge-Advocate's warrant to bring him in as a witness, and then no exceptions could be taken; which warrant when I had procured, I coming from the Advocate's, casually met Davison on horse-back above Ludgate, near the Advocate's lodging in Paul's Church-yard, where asking of him how long he stayed in Town, he answered, that he was to depart to Gloucester the next morning: Whereupon I told him, I had a warrant to bring him in as a witness from the Advocate, who was then in his lodging, which was close by; and therefore since he was to depart so soon, I desired him to go with me then to the Advocate to set down his testimony upon oath; which he excused, saying, he had promised to meet some friends to drink a quart or two of wine with them before his departure; and so we parted without more discourse. And was this a tampering, only to desire a witness to set down what he voluntarily informed me, before the Advocate, when I had a warrant to examine him? As for offering him a quart of wine, or inviting him to a tavern to drink, I protest I never did it; and am so averse from such a courtesy, that, to my remembrance, I have never these eighteen years space, gone into any one tavern in London, or elsewhere, to give or receive one quart of wine, but only to eat at breakfast or dinner; and therefore it is very improbable I should proffer this courtesy, unto him, who, as I discovered then by his discourse, had drank sufficiently before, and was going (as he told me) to drink more. But when I proffered him a quart of wine, and that in the open street, was a quart of wine, think you, so considerable a thing as to tempt or corrupt a witness of that quality? or the open street a fit place for such a purpose, where so many saw and over-heard us? Certainly if this gentleman were so ignoble as to be corrupted with so poor a courtesy as a quart of wine in the open street, I am certain his arrears of pay, in col. Fiennes's own private chamber in Arundel house, where he had fair promises to receive them, are far more prevalent temptations to corrupt, and keep him back from appearing here in person, whither the Defendant might have brought him to testify my tampering with him, had he pleased, he being still in London, and under his command, though he will not appear upon our summons to testify the truth. But if he be such a one as col. Fiennes would intimate him, (though I have a better opinion of the gentleman's honesty) that a quart of wine will buy him more than truth, I should rather value his testimony, than put him to his oath, were he now present: But being neither examined by us, nor yet intended to be, this imper-

ment. **ti**ment daviil sounds more of calumny than judgment.

But because col. Fiennes hath now given me this just occasion, I shall in the third place (which otherwise I should have concealed, but that his aspersions have provoked me to alledge it by way of just defence) truly inform your lordships: First, what advantages, obligations, and engagements he hath upon his own witnesses, which may probably sway them to over-much partiality in their testimonies, of which we are wholly destitute in respect of ours. Secondly, How the Colonel and his agents have tampered with, affronted, threatened and abused our witnesses. 1. Most of the material witnesses in this cause were the Defendant's own officers and soldiers, from whom they expect not only future preferments, but their arrears of pay, which they were in danger to lose if they should either appear against him, or he miscarry in this Case. Upon this ground not only Mr. Hassard, as you heard, was unwilling, and Davison refused to give in his testimony, but one capt. Oland, (as appears by capt. Harrington's Deposition) with sundry other material witnesses, denied to speak what they knew: and some of his officers, since they came hither to witness for him, have said, that if the cause went with him, (as they made little question but it would) they should have all their arrears paid, else they should lose them. Now whether the promise of arrears be not a tampering with, and the loss of them a threatening or terrifying of witnesses, we leave your lordships to resolve. Besides, Mr. Sprig (secretary to the lord Say) went to a noble knight's lodging at St. Albans, produced as a witness by the Defendant, that same morning he was to give in his testimony, with this strange prologue to an evidence, 'that col. Fiennes presented his respects to him, and desired him to come that morning to the council of war to give in his testimony for him; and that his lord likewise desired to be remembered to him, and to let him know that 200*l*. (of the 500*l*.) due unto him, was ready for him at London upon his return, and the rest of the money should be ready for him as soon as it could be provided,' which capt. Harrington, then present in the knight's chamber, heard and deposed; nor could, nor did Sprig deny he delivered such a message, but said he had no ill intentions in it. To which I replied, that whatever his intentions were, the words spoken at that season, and upon that occasion, tended more to corrupt a witness, than my offering a quart of wine in the open street did (had I offered it, as I did not) which was so much insisted on. And though I knew the knight so well, that no offers whatever could corrupt him; yet how such speeches might work on other witnesses who expected debts and arrears from the Colonel, I could not divine; and those who durst use such tempting speeches so openly in St. Albans during the Trial, would probably make use of the like, or worse temptations in private to witnesses, to corrupt or

take off their testimony. However the court by this might clearly discern, which side was most guilty of tampering with witnesses. 2. That some of our witnesses sent for thither by the Defendant, had been openly abused, affronted, quarrelled with by the Defendant and his witnesses, even in the Council's presence, and elsewhere: as namely capt. Bagnal, who, though an extraordinary friend to the Defendant, (for whom he took two journeys to London for a Commission at his own charge, and raised a company to defend the Town) yet merely for testifying the truth impartially, was strangely questioned and affronted by the Defendant himself, abused with ill language, taxed with perjury, quarrelled with by Scotten, who gave him the lie in the Council-Chamber, before your honours were departed thence) challenged, scorned, reviled, threatened to be mischieved, (for all which affronts we crave your justice.) And if our witnesses be thus affronted, menaced, abused in your very presence, how think you were others dealt with behind your honours and our backs, to strangle truth? A vehement argument all hath not been rightly carried on that side.

I shall next consider the great difficulties on our parts to procure, and the impossibility to suborn the Witnesses we produce. First, All our witnesses for the most part, are strangers to us, all of them better known and more obliged to the Defendant than to us: they are persons disinterested, disengaged, who neither gain nor lose by the Trial, however the sentence go; they were never under our service, power, or commands, most of them were such who served the state *gratis*, and were no mercenaries in that service. We are no ways allied to them, have no command over them, no arrears or debts to pay them, no rewards or preferments to bestow upon them, no engagement to allure or enforce them; whereas, on the contrary, the Defendant hath all the advantages and bonds that can be, tending to partiality over his witnesses. Many of them are *testes domestici*, as his brother, kinsmen, servants, footboys; most of the rest his officers and soldiers, against whom we excepted as incompetent. First, Because they were parties in this case, joining with the Defendant in a Petition to his Excellency for this Trial, which was granted at their request, as the Proclamation of his Excellency attests. Secondly, Because they were confederates, and equally guilty with him in this Treason of surrendering Bristol, most of them being of his Council of War, and consenting to this act; which if it prove capital and criminal in him, will likewise be so in them: in swearing therefore to acquit him of this Treason in which themselves are involved, they do in verity swear to acquit themselves, and one to justify and excuse the other, which ought not to be admitted; for then the foulest treachery that is might and would be excused, yea, the greatest Traitors acquitted, if one might testify for the other in that particular crime whereof they all stand guilty,

3. Because they all depose, as for their own lives and safeties, so likewise for their own honour, reputation and reparation; some of them in their speeches now, and most of them in their Petition to his Excellency, demanding reparation in their honour from us by this very Trial: and so are both parties and witnesses in this respect, very unequal to be admitted.

4. Some of them have carried themselves as passionately in this case as parties, in menacing and abusing our witnesses, and ourselves too, threatening no less than hanging to us for questioning this Surrender, if the Defendant be acquitted; and can such be competent witnesses?

5. He hath very strong obligations upon most of them, the bond of consanguinity and alliance; they are his kinsmen: of superiority and command; they were his officers, soldiers, servants, advanced by him at first, and preferred or promised preferment by him since: the bond of sundry debts and arrears due to them from him, which they are promised to receive if he be acquitted, and expect to lose if once condemned. And what strong engagements, what great advantages all these are to tempt or corrupt witnesses on his part, and silence them from testifying ought against him on our part; and how far forth such witnesses, who appear thus to be parties, shall be allowed of in this case, especially such as are *participes criminis* (adjudged incompetent by all laws) and guilty of the same Surrender, we shall humbly refer to your just considerations.

3dly. The Defendant answered to an objection made by Mr. Prynne; To wit, That it must needs be cowardly surrendered, because the enemies that very morning were valiantly repulsed in all places (but that one, where only 150 of them entered) with the loss of 700 men's lives, and as many more wounded, whereas the garrison then lost not above 3 or 4, and had scarce any one man dangerously hurt in the assault; so as the enemy by this great loss was far weaker, the garrison much stronger, and more courageous than before: Whereto he briefly answered, that the slaying of 700, and wounding 700 more, was not so great a loss and discouragement to the enemy, as the entry of the line was an encouragement.

To which Mr. Prynne replied, 1. That those who entered the line, by their own confessions, were so far from receiving encouragement by it, that they gave themselves all for dead men, and had no other hopes but to be quite cut off. 2. Their companions, discouraged with the general repulse in all other places, knew not of their entry in two full hours space, during which time their powder was quite spent, that they might have been all cut in pieces, had the Defendant done his duty. 3. A whole regiment of their horse retreated four miles off, with a resolution never to come on again. Therefore the entry of so small a party, compared with their great loss, could be but a very poor encouragement, since they might have been so easily repulsed at the first, and

sent back by Weeping-Cross unto their retreated companies.

After this he descended to his Arguments, to prove the Surrender not cowardly.

His first Argument was this, That he was no coward, as appeared; 1. By his apprehending and sending away col. Essex: 2. By his apprehending and executing the conspirators at Bristol in the midst of the city, even at noon-day: 3. By quelling the malignants, and disarming the Train-Bands of the city! 4. By his valiant behaviour at Worcester, where he and his brother, when the forces were there routed, were some of the last officers that came off the field: 5. By his charging at Keinton Battle, one of the next to sir William Balfour, up to the cannon of the enemy, when the horse killed the cannoneers, as they lay under the carriages; and by other following particulars: *Ergo*, he did not cowardly surrender Bristol.

To which Argument, Mr. Prynne replied: 1. In general, That they did not charge him in the Articles to be a coward, which was not now in issue; nor yet, that he had shewed himself cowardly in all actions since he was Governor of Bristol; but only, 'That he had cowardly surrendered Bristol;' And, *in hoc individuo* he did and might deal cowardly, though he might be valiant in other particulars.

2. That the Argument was a *gravis non sequitur*; for as a very coward may now and then do valiantly upon occasion, and yet be no valiant man; (as sometimes 'desperato timor dos fortes facit,' an experimental proof whereof we find in timorous stags, who run away at the barking of the smallest cur, yet will encounter both dogs, horses, and men in extremity, when they are at a bay, and can run no farther;) so a valiant man may sometimes commit a cowardly action, and yet be no habitual coward. To put this out of question, We have a memorable example in the apostle Peter, who though he were of a bold resolute spirit, and no doubt the stoutest of the Apostles; as appears by his adventuring (at Christ's command) to walk out of the ship upon the sea itself in the midst of a storm; his resolute telling our Saviour, 'That though all else should be offended and forsake him, yet he would not; and though he should die with him, yet he would not deny him,' (which all the other Apostles likewise protested, each for himself;) by his resolute drawing out his sword to rescue Christ when he was apprehended by the high-priest's servants, his cutting off Malchus's ear therewith, his not putting up his sword, nor giving over fighting till Christ commanded him; and by his following our Saviour into the very high-priest's hall, when the other disciples forsook him and fled: (all acts and arguments of extraordinary courage) yet after he saw Christ brought into question for his life, he suddenly degenerates so far from his former magnanimity, through a popillanous fear then seizing on him, that at the very voice of a silly maid, and a high-priest's servant, he no less than thrice denied the knowledge of his

master Christ, and that with bitter oaths and execrations: Should Peter in this case argue, 'I was valiant when I walked on the sea; in the chamber when I told Christ I would rather die than deny him; in the garden where I fought for him; and in following him into the high-priest's hall, whither the other disciples durst not accompany me.' *Ergo*, I did not cowardly nor unworthily, in thus denying him thrice with oaths and curses in the high-priest's hall? Certainly, this were a most irrational, false argument; because courage in some actions, is no negation or extenuation of cowardice in others, almost in the self-same nick of time. Yet this is col. Fiennes's objected Argument; I have shewed myself courageous, (as well as Peter) in some actions; in removing col. Essex, executing the delinquents, disarming the malignants of Bristol, in the fights at Worcester and Edgehill; yea, altogether as valiant as Peter, in my vaunting words and promises, [See the Depositions of col. Strode, James Powel, capt. Bagnal, Mr. Hassard, and others.] 'That I would dispute every foot of ground with the enemy to the utmost, who should win it from me by inches; that my flag of truce should be my winding sheet: that I would keep the City, or it should keep me, or I would lay my bones therein?' (O brave vaunting Peter!) yea, I was pretty full of courage during the Siege, till the enemy entered the line, and then I was just like Peter entering the high-priest's hall; I followed the enemy afar off, and fell from fighting to parling; from defending to surrendering the City and Castle; before any out-fort taken, or one shot or assault made against City or Castle; *Ergo*, I did not cowardly or unworthily surrender them now, having shewed myself so valiant in deeds before.—But since Peter's pristine valorous acts, and speeches, did no ways mitigate nor extenuate, but aggravate his subsequent cowardly denials of Christ, so will the Defendant's his surrender.

3. His forementioned valourous exploits have no relation at all to the Surrender of Bristol, being of a different nature from them; his prowess therefore in the one, can never expiate, nor disaffirm his cowardice in the other, the only thing we now charge and prove, these other objected actions not being here in question.

4. He gave this Answer to the objected Particulars; so far forth only as they were applied to Bristol's Surrender, (1.) That the sudden surprisal of col. Essex, being done at a private house out of Bristol, when the Defendant had his troops about him, and col. Essex only three or four servants near him; was a greater act of prudence than courage, and a man not really valiant would have done as much: (2.) That when he apprehended the conspirators, he had the absolute command of the City and Castle, a strong garrison in both, and the major part of the City and county, siding with him: It was therefore no great argument of extraordinary valour, to apprehend them, being but few in number, weak in power, and suddenly surprised

at unawares. And when he executed them, all the malignants were disarmed, the whole City and country generally incensed against them for their horrid treachery, and their party unable to make the least residence, so as a child might have put them to death as securely as the Defendant. Therefore this could be no convincing evidence of his courage. (3.) That the malignants were quelled by the discovery of the plot; and the disarming of the Train-Bands, to arm his own soldiers and best affected citizens, was by the general consent of the mayor, sheriffs, and most part of the citizens, after the Conspiracy detected, without any the least resistance; *Ergo*, no act of courage, but rather of discretion or distrust. (4.) That at Worcester, all the horse were routed and fled, and his own and brother's troops among the rest, is no great argument of their valours, which received some blemish by that action: and that he and his brother were some of the last officers of horse, who there came off the field, it might be, as well because they were in the rear of all the horse and so could not possibly fly out of the field before the rest, as by reason of any extraordinary valour in them more than others, and so no convincing proof of valour in them. (5.) That his valiant charging in sir William Balfour's regiment at Edgehill, where every man did valiantly, and none turned their backs in all that brigade, can be no special proof of his courage, since every coward will charge in company where no man turneth his back, and where there is greater danger in flying than charging: However admit it were good evidence, yet this is a very ill sequel, if put into a logical form: Col. Fiennes charged valiantly with sir William Balfour at Edgehill; *Ergo*, he did not cowardly surrender Bristol.

His second Argument to prove the Surrender not cowardly, was his not quitting Bristol immediately upon sir William Waller's defeat at the Devises, and his raising of men, arms, and perfecting the works even after that to defend it, when many of the country-gentlemen left the town, and marched to London, with sir William Waller.

To which Mr. Prynne answered: 1. That he did but his duty in all this, which was rather an argument of his diligence than courage.

2. That it had been the greatest treachery and cowardice in the world upon sir William's bare defeat, to quit a City of so great consequence, which he was charged to keep by his commission, and in fortifying whereof he had spent so great costs, before the enemy came before it: who might probably, as things then stood, have no real intention presently to besiege it, upon that defeat.

3. Extraordinary diligence in fortifying, is the greatest argument of fear and cowardice, if not seconded with answerable prowess in defending what is fortified. A coward will sooner provide armour of proof, than a truly valiant man; since therefore the City was no longer defended, fortified and manned, this reason will rather convict than acquit him of cowardice.

4. The true reason why so many gentlemen then deserted the City, was (as themselves have confessed) not for that they deemed it untenable; but because they feared and discerned, the Defendant intended not to keep it to the last, but to surrender it to the enemy's hand; which he hath clearly enough confessed in his answer.

5. This argument in verity, is no more in effect, but a Governor provides arms, soldiers, cannons, ammunition, to defend a Town of importance, or to encounter the enemy, and then surrenders (as he hath done) in less than three days siege; or runs away after he hath stood a charge or two; *Ergo*, he did not cowardly herein; because he provided men and arms, whose valiant use, not diligent preparation, is the only proof of valour.

His third argument was, No man could have expected less safety of conditions than himself, he only being excepted out of the general pardon offered to the soldiers and citizens; *Ergo*, he surrendered it not cowardly.

To which was answered: 1. That it is probable his speedy, unexpected Surrender of the Town and Castle, before extremity, proceeded either from a fear to lose his life in holding them out till the last, or a desire to purchase his peace and pardon out of which he was formerly excepted from the King, with so rich a prize of consequence as Bristol was, which would most certainly procure it, with infinite advantage to the King, and greatest prejudice to the Parliament. 2. That if he could have expected less safety of conditions than any other, for the reason alledged, this should have rather engaged him to hazard his life in defending it to the utmost extremity, than to yield it upon any terms prejudicial to his own security, which is first provided for in the Articles.

His fourth was, That he could never have undergone more danger in the Castle had he held it, than he did in the guards, which he diligently visited; *Ergo*, he surrendered it not cowardly.

To which was answered, he received no hurt at the guards, and lost but six or eight men at most in the siege. *Ergo*, if he might with as little danger and loss have held out the Castle, his crime and cowardice was the greater in surrendering it so dishonourably without stroke, or once retiring to it.

His fifth was, from his Carriage when the enemies entered, to prevent whose taking the City, he had only two means left. The first was, to fire the suburbs, for which he issued out a warrant, which warrant was not executed, but revoked for want of men to fire them: The second was, to fire the City behind them, and so to retreat into the Castle; which he could not possibly do without the death of many innocents, men, women, children, and ruining of many men's estates: A fact so horrid, that his conscience would no ways permit its execution, he being loth to begin so ill a precedent, which would have infinitely redounded to the Parliament's dishonour. Besides, the Castle being

not large enough to contain half his horse and foot, and the streets very narrow, he could not have retired into it, without great difficulty and danger of being cut off by the enemy, and those horse and foot which could not be received would have been utterly lost, and exposed to the enemy's cruelty. Upon which considerations only, not out of any cowardice, he did by Clifton's advice call a Council of War, and propound a Parley, whereupon the Surrender ensued: Therefore it was not cowardly.

To which Mr. *Prynn* replied, 1. That it is apparent by this argument, that if the suburbs had been fired, the City and Castle might have been saved, and the enemy beaten out when lodged in the suburbs; therefore he ought in this case, both by the common and martial law, to have fired the suburbs to preserve the City and Castle, and must answer his negligence in not doing it; his want of men to fire the suburbs being a frivolous excuse, since he had at least 2,300 garrison soldiers; and Mr. Hassard the gunner (as he acknowledged to divers) and major Wood, with others, offered to beat, or fire them out of the suburbs, but could not be permitted, though it might have been done with ease, the houses being combustible, most of them built with timber, and that part of the suburbs not very large.

2. That between that part of the suburbs and body of the City, there was a key on the westside of Froom-bridge, unfordable by horse or foot every tide, by reason of the waters, and at low water too, through the deepness of the mud, being so deep in most places, that men must stick fast in it (as some of the conspirators did upon the discovery of the conspiracy, who were taken sticking in the \* mud :) That there is no marching over the key in file or rank, but only one by one, in confused order. That on the key-side next the City, there is a wall of stone near eight or nine foot high above the mud, which no horse can enter, nor no foot scale, unless at a slip or two, which are but narrow, and stand four or five foot above the water: That there are houses all along the key, which commanded the college-side, where the enemy entered in such sort, that none of them could offer to wade over the key, but they might be cut off with ease; that two or three pieces of ordnance planted at the head and lower-end of the key, would so scour all that passage, that none could have passed over without loss of life, and the passage there would have been so difficult, that 100 men would easily have kept out 10,000, all which was attested by col. Popham, licut. col. Paleologus, major Wood, licut. col. Andrews, capt. Bagnal, and some of his own witnesses upon cross examinations; therefore there was no danger of the enemies entry there. For Froom-gate itself, it had a new portcullis, and after the enemies entering the line, and late sally on them, the very maids and women, in the face of the enemy, made a barricado and bulwark against it 15 or 16 foot thick, with

\* Attested by col. Popham, and others.

earth and sacks of wool, to keep them from entering there, being their only passage into the City from that suburbs; that above the gate was the river Froom (which runs under it) with a wall and houses between the City and it, so as the enemy might easily have been kept from entering the body of the Town, and could not have entered it without infinite loss and disadvantage.

3. That had they gotten over the key, or Froom river into the body of the City, yet the streets were so narrow and disadvantageous to the enemy, that their passage might have easily been hindered, the streets blocked up with casks, carts, sleids, stools, and a piece of ordnance or two placed at the head of every street, and the houses lined with musketeers would have scoured and secured it, that the enemy must have sustained extraordinary loss, at least 50 or 100 men for one of ours, as they lost before in the storming. Besides, they must have all marched up the hill, in paved streets, which are so slippery that the foot could have hardly stood to charge, and the horse would certainly have slipt and fallen: in regard of which disadvantages, our men having the hill, flankers, the shelter of houses, and charging downwards, must needs have repulsed them with extraordinary loss had they forcibly entered, and made a most safe retreat into the Castle at any time when they saw just cause, without any such difficulty or danger as was suggested.

4. Admit they had taken the body of the Town beyond the key, adjoining to the Castle, which they could not have done without excessive loss and great difficulty; yet all that part of the Town being commanded either by the Castle, or other forts and outworks all in our possession (as Clifton himself with other of the defendant's witnesses confessed, and major Wood proved) they could not possibly have held it long, and would have been in worse condition within it than before, and so no absolute necessity of firing it, had not his courage and conscience served him to do it.

5. For his horse and foot, incontinability in the Castle, in case he had been forced to retire into it, there were sundry other places to bestow them in besides the Castle: As, (1.) The body of the City adjoining to the Castle, which would have billeted them all till the enemy had forced it. (2.) That part of the suburbs, under the command of the Castle next to Lawford's gate, distinct from the body of the City if taken, and very defensible, the Castle and outworks then remaining ours. (3.) The out-forts, where the guards might have been doubled or trebled as there was cause, especially now when he had an overplus of men that he knew not how to bestow. (4.) That part of the City beyond the bridge in Somersetshire side, which was very capacious, able to contain all his supernumerary foot and horse, though the other suburbs and body had been taken; which part (the bridge being broken down or defended) had been inaccessible, strong, and tenable for a long time against all

his majesty's forces, we having then all the out-forts in possession which commanded other parts of the Town, and Ratcliff church, Tower-Harris, and the Castle (three extraordinary strong forts) commanding and securing that part beyond the bridge; which being fenced with extraordinary strong outworks, and deep watery dikes, Tower-Harris and Ratcliff church on the one side, with the River and Castle on the other side, and strongly garrisoned with the soldiers retired from other parts, had been almost impregnable, and might have held the enemies play for sundry months, had the Defendant resolved to hold it to the utmost. Having therefore so many several safe retreats and receptacles for his horse, foot, and not making use of any of them, though he promised to dispute every inch of ground with the enemy (as he might have done with honour and great advantage) his pretence is false, his Surrender cowardly beyond all excuse.

6. He hath oft inculcated this to your honours, that the citizens were generally very malignant, and disaffected to the Parliament; and we have proved, that the most of the best affected, had carried their estates and three months provision into the Castle, where their persons and goods were by the defendant promised to be secured. His forbearing therefore to fire the City in case he had been necessitated to it, proceeded not from any public care he had of the Parliament's friends or kingdom's safety, but from his private respects to the persons and estates of malignants, which he would rather carefully preserve, to enrich, encourage, and strengthen the enemy, than fire or endanger to preserve the Parliament and kingdom. Mercy and compassion are doubtless commendable virtues in a Governor, who should not use cauteries or firing till the utmost extremity: but when such an exigency happens, that a City must be fired, or both it and the kingdom lost or hazarded, it is foolish cruelty, not Christian mercy, to be over-pitiful in such a case. It is a cruel destructive mercy to save a City (especially a malignant one, as this is averred then to have been) to destroy a kingdom, yea, our religion, laws, and liberties with it: better the greatest part of the City had been turned into ashes to preserve the Castle and other parts of it to the Parliament, and secure the realm, than to surrender the whole so cowardly, so unexpectedly, to the loss of the West, and kingdom in all probability.

7. The defendant well knew of what extraordinary concernment the loss of Bristol would be to the kingdom, of what infinite advantage to the enemy, as is evident by his own letter to my lord Say (dated March 20, 1643, before it was fortified or fully garrisoned) published in his printed Relation, page 13, where thus he writes:

' May it please your lordship to understand  
' first the importance of this city of Bristol,  
' &c. The enemy hath lately cast his eye  
' upon it, prompted by the witty malice of  
' our malignants, to espy his advantage: if he

'possesseth this city, he will reap these benefits by our loss. 1. He will get much money, arms, and ammunition, in a more cheap and less hazardous way, than he can have them out of the Low Countries; all which he will pay for with monopolies, and engrossments of trade, things with which the great ones of this town have been well acquainted, and are therefore malignant. 2. If he gain this town, he will soon subdue Gloucester, and become master of all the tract between Shrewsbury and the Lizards-Point in Cornwall, a quarter so plentiful as his plundering army yet never saw. 3. He will become master of all the traffic of that inland sea the Severn, and make all the shipping both of the Welsh and English coast his own. 4. His neighbourhood to Wales will from time to time supply him with a body of foot. 5. We shall lose a great port-town very important for the service of Ireland, and fit to give landing to the rebels of that place, or any other enemy.' Since therefore he knew this city to be of so great importance to the kingdom, and the loss of it so extraordinarily advantageous to the enemy, he should in this respect have held it out to the utmost extremity, and rather hazarded the firing of it by the enemy, which would not have done it, (especially being malignant) or by himself, than quitted both it and the Castle too, with all the ammunition, cannon, arms, provisions, colours, ships, merchandize, wealth therein, upon such poor dishonourable terms, before any out-fort taken, or one shot made against the City or Castle walls, he wanted nothing but courage to defend them, the enemy having lost so many, and himself so few in the former stormings.

His sixth Argument was, that he stood in places of greatest danger with his troop, near alderman Jones's house, where a granado falling into the midst of his troop, and hurting no man, he thereupon encouraged his soldiers, saying, That God did protect them.

To which was answered, 1. That not one of his troop, for aught appears, was ever hurt in that or any other place where he stood with them; therefore the danger was not very great. 2. That this place under alderman Jones's house, was more than cannon-proof, and more secure against the enemies shot, which the house and garden-walls guarded off, being between the enemy and his troop; therefore no place of danger but security. 3. That this granado's falling in among the troop at that time, was merely casual, and hurt not any, though it frightened many, and made the Defendant and his troop presently to remove from thence, as his own witnesses deposed. 4. Himself never charged the enemy in person with his troop after their entry within the line; his standing therefore with them in this secure place before the entry, was no great proof of his valour, much less that the Surrender was not cowardly.

His seventh Argument, to prove the Surrender not cowardly, was, That the Parley and

Surrender were both agreed on by the Council of War; *Ergo* not cowardly.

To which was answered, 1. That himself was both the first mover, persuader of this Parley, this Surrender, and the principal man that advanced it, drawing on the rest to consent to it, and not making the least opposition against it. 2. That the Council of War, wherein the Parley was first propounded, was not general, as it ought to have been, but private, few of his officers or the gentlemen there, having notice of it, till a Parley was concluded, and a drummer dispatched twice to the enemy before they would take notice of it. At this Council no country gentlemen were present, but sir John Horner, who gave no vote, and col. Strode who voted against it, and not above six or seven officers, of which lieutenant. col. Davison, and major Holmes, were two who opposed the Parley; as for Mr. Edward Stephens, whom col. Fiennes averred in print to be present at it, he denies upon oath, that he had ever any notice of it, and so doth col. Stephens too. Being therefore such a private conventicle and no general Council, and these thus voting against the Parley, it is a greater evidence than disproof of a cowardly surrender. 3. The Defendant, and his brother John, to circumvent the Council, and draw them on both to a Parley and Surrender, misinformed them that there were but 20 barrels of powder, and 400 weight of match left; as he confesseth in his Answer to the eighth Article, commanding Mr. Hassard (who kept the stores) to affirm there was no more, when as you have heard it proved there was above three times as much more then in the Castle. His misinformation therefore being the chief motive to sway the Council to this Parley and Surrender, their consents will not excuse but aggravate his cowardice and treachery in seducing them. 4. If the Town and Castle were tenable, sufficiently provided with all necessaries for a defence, and not reduced to extremity, as we have proved, the Surrender by a Council of War will not make the cowardliness and treachery less but greater, and subject the whole Council to censure, as appears by the cases of Weston, Gommeyns, and others adjudged in parliament: Otherwise, if this plea should be admitted for a justification, a governor and his officers might safely without danger betray any fort or place through cowardice or treachery, by voting it in a Council first, and then putting it in execution.

His eighth Argument was, That when he sent to the enemy for a Parley, and their hostages came to Froom-gate, which was barricadoed up, they swore, 'God damn us we will come in at Froom-gate,' (which was the nearest way) 'or have no Parley at all:' whereupon he sent them this resolute Answer, 'That they should not come in there, but at Newgate,' which they were enforced to do after much contest: *Ergo* the Surrender was not cowardly.

To which Mr. Prynn answered; 1. That at

that time From-gate was barricadoed up with a bulwark of earth and wool-sacks 15 or 16 foot thick to keep out the enemy, made by the very women and maids, with the help of a few men, in a short space; and when the hostages came to that gate, the work was raised so high, that capt. Taylor, the Defendant's own witness, confessed, 'He could not see nor confer with them over it, but was enforced to go to speak with them through a window, when he received their God-damn-me Message, that they would come in at that gate, or else return;' from which window likewise he returned the Governor's Answer to them. Now to demolish such a barricado as this, to let in these peremptory hostages, and the enemy too, who might then have clear passage into the City, had been such an indiscreet and cowardly act, as was not only below the spirit of a Governor, or soldier, but of a sucking child; and would have argued the Defendant (if condescended to) a man utterly destitute, not only of courage but common discretion. 2. This braving unreasonable request argues plainly, that the enemies had a very mean conceit of the Defendant's valour, else they would never have presumed to send him such a disdainful message, which an heroic spirit would have so far resented, as not to brook a Parley upon any terms; and his not yielding to it, is no greater evidence that the Surrender following was not cowardly, than that the building of Tinterton steeple was the cause of the increase of Goodwin Sands.

His ninth Argument, was his courage and speeches at the Parley, wherein he confessed, 1. That the motion of the Parley proceeded merely from himself. 2. That the Parley was concluded on before ever the Mayor repaired to the Council. 3. He said, 'The Mayor was extraordinary fearful, and pressed earnestly for an agreement with the enemy.' 4. That when the enemy's commissioners at the Parley, upon the motion of capt. Birch, that the citizens might have liberty to carry away their estates if they pleased, stuck at this demand, he thereupon rose up, and with great earnestness protested, that he would break off the Parley, and rather lose his life, and hold and put it to the utmost extremity, than not provide for the security of the citizen's estates: which speeches he proved by the testimonies of capt. Birch and Mr. Prickman. *Ergo* he did not cowardly surrender the Town and Castle.

To which Mr. Prynne replied, 1. That the motion of the Parley proceeding originally from himself before any solicitation from the Mayor or Citizens, argued that himself was more fearful than the Mayor, though thus extraordinary timorous; and that both the Parley and Surrender proceeded from his excessive fear. 2. That he had here *confitentem reum*, that he held not the Town till utmost extremity, as his duty bound him: For he told the Commissioners, if they would not yield to secure the citizens' goods (whom he frequently brands for desperate malignants) he would then venture

his life, and put and hold it to the utmost extremity; therefore he held it not, by his own confession, till such extremity: and so by the very Articles of War, and construction of law, is guilty of a cowardly and traitorly Surrender, for which he ought to die. And here observe the strange temper and guilt of the Defendant: My lords, he was constituted Governor of Bristol, not by the Mayor and Citizens, but his Excellency and the Parliament, to preserve it from the enemy's hands, rather for the kingdom's safety, than security of the malignant citizens' goods. He had formerly oft protested to the best affected soldiers and citizens, [James Powell, col. Strode, capt. Bagnal, Abel Kelly,] that, 'he would dispute every inch of ground with the enemy, from the out-works to the gates, from thence to the Castle, whither he would make his last retreat, and there lay his bones, making his winding-sheet his flag of truce,' and the like, for the common good and security of them and the realm. But now alas, as soon as the enemy entered the line, *Hec quantum mutatus ab illo?* he became a quite other man; and forgetting all former valiant promises, heroic resolutions for the republic, he presently sends for a Parley, and disputes not so much as one inch of ground with the enemy near the gates or body of the City, retires not one foot towards the Castle; and instead of adventuring his life to preserve the City for the Parliament's and kingdom's safety, against the Irish rebels, and Welsh malignants incursions, he hath not so much as one word or thought tending that way: but all public engagements set aside, he now only looks after the security of his own person, and of the malignant citizens' persons and estates, for the enemies future advantage, and rather than these shall not be saved, he now protests he will lose his life, and put all to utmost extremity. Had he really intended to make good this his protestation for the citizens' benefit and safety, in case the enemies had denied his demand in their behalf, (which I much doubt of, since notwithstanding his foresaid protestations, he would not do it for the public;) I humbly conceive he ought much more in point of honour and duty to have executed it for the whole kingdom's preservation and utility; which since he did not really perform nor intend to do it, you have here *confitentem reum* an evidence dropping from his own mouth sufficient to condemn him: And therefore my humble motion to your honours is, that his person may presently be secured as by law it ought. The rather, because it plainly appears by all the carriages of the Defendant, from the enemy's first entry till his return to London, that this Surrender proceeded merely from timidity and cowardice at the best, as I shall evidence by these particulars.

1. By his [capt. Bagnal, William Deane, William Whithorn,] calling the soldiers from the line under pain of death, and not permitting them presently to encounter the enemy, as he was importuned by divers; and bringing them

off in such confusion, that many of them left their arms, ammunition, and ordnance behind them, which might have been easily drawn off, there being so many colliers horses in the city for that purpose.

2. By giving no order nor direction to the soldiers drawn off, for any present service or salley in divers hours, by means whereof, many of them deserted their colours, [capt. Bagnal.]

3. By not employing his reserve under capt. Stokes, nor his main-guard, nor soldiers in the castle, consisting of at least 500 men, who were fresh and had been upon no service, to make a present salley on the enemy, who might with ease have been cut off by them without calling any from the line [major Wood, William Whit-horn.]

4. By his contradictory commands, and pale looks, attested by William Deane, Mary Smith, capt. Bushel, Thomas Thomas, and generally taken notice of by the soldiers.

5. By his hastiness to propound and send for a parley to the enemy, even before the salley made, as col. Strode deposed, contrary to his advice; and then again presently after the salley.

6. By the forgetfulness of all his former promises and of the very Castle itself, formerly accounted by him the strongest rampart and last retreat, where he would lay his bones [James Powel, Mr. Hassard, capt. Bagnal, col. Strode;] which was not now so much as thought on, although the magazine, ammunition, and provisions lay therein, whereby he betrayed, cheated, and undid the best affected citizens.

7. By his own confession in his Relation, p. 10, he writes, 'That all the conditions they desired were yielded to;' yet had he not then so much heart or brain left within him, as to demand or make more honourable conditions, than to deliver up the Town and Castle, with all artillery, arms, ammunition, cannon, victuals, prisoners, and colours too, which was all that could be lost or given away from the state, or to demand convenient time or carriages to convey away their goods from thence.

8. By accepting Articles in the commissioners names, when as they should have been in prince Rupert's then present, who else was not obliged to observe them; and not exacting an oath of due sufficient caution for performing them, after so many experiences of their treachery and truce-breaking.

9. By suffering one of the enemies hostages to depart the town, as soon as the Articles were concluded, and giving liberty to the other to do the like; but that major Allen coming casually into the room withstood it; by means whereof they had all been wholly exposed to the enemies mercy and sudden assaults, having no security for himself, his soldiers or the city; whereas both his hostages continued still in the enemies hands [major Allen.]

10. By his not publishing the Articles after they were concluded, till capt. Bushel, a prisoner of the enemy's party, put him in mind thereof, and published them at his request [Mr. Baynton.]

11. By suffering his men to fall off their guards, the prisoners to get loose, the enemies to enter the Town and Castle before the time appointed for the Surrender, [major Wood, Mr. Powel, capt. Bagnal,] whereby many rapines and violences were committed both on the soldiers and townsmen in the very streets and Castle, which the enemy could not prevent, and the colonel never endeavoured to see righted; which caused col. Gerrard (foreseeing some complaints would be made) to desire major Wood (who in these disorders suffered three days imprisonment there) to carry a letter from him to Nath. Fiennes, which he shewed to major Wood, to this purpose: 'That whereas many outrages had been committed contrary to the tenor of the Articles, which might haply be imputed to the king's grace, he gave him to understand that the fault was in himself, who had most unsoldierly neglected to look to the performance of them upon his party: and if this declaration did not give him satisfaction, he should be ready for further clearing of himself to wait upon him with his sword in his hand.—Your friend whom you call cavalier, Charles Gerrard.' Which letter major Wood delivered.

12. By his leaving capt. Blake, and capt. Husbands with their soldiers in Windmill-Hill and Brandon-Hill forts [capt. Husbands, Rich. Winston,] when he marched out of Bristol, and given them no notice of the Articles of Surrender, no warrant under his hand to deliver up these forts according to the Articles; the first notice they had both of the Articles and the defendants leaving the town, being given them by the enemy, who demanded the forts which they held after the governor's departure, from whom they received no order to quit them, which might have endangered their lives.

13. By his taking no care [major Wood] to march away with his men in a body, which they could not well do, because their colours and drummers were surrendered by agreement, whereby they might have been kept together for the service of the Parliament: and yet the preservation of his men and horse in a body for their present service, is the best and only reason he gives for the surrender of the City and Castle, both in his Relation, Letter, and Answer to the Articles.

14. By his cowardly and unadvised speeches concerning the intenablety of Gloucester for three day's space, if the king's forces came before it, and his discourse to Mr. Pury [Mr. Brown, Mr. Pury,] after its relief; his fear transporting him into such an uncharitable opinion, as to judge brave col. Massey as pusillanimous and cowardly as himself.

15. By his very printed Relation, Letter, Replies and Answer to the Articles; in all which the intelligent reader may palpably discern a spirit of trepidation and cowardice to have seized both on his brain and pen, which made him invent so many unworthy shifts, untrue surmises, (as of close decked boats prepared by the enemy, a resolution to storm the

Castle, and to take it in two days at most, &c.) And utter so many strange paradoxes, yea contradictions unworthy a man of honour; and deny, not only col. Essex, but himself to be Governor of Bristol, or of the Castle there; of which before. If all those evidences may be credited against his bare proofless allegation, the Surrender must needs be cowardly and unworthy at the best.

Upon this col. *Fiennes* affirmed, That the report that Bristol was cowardly and unworthily surrendered, was first raised by Mr. *Prynn*, the prosecutor, in his book intituled 'Rome's Master-Piece,' p. 35, published the 1st of August 1643, within five days after the surrender of Bristol; and that before the publishing of this book, it was not so reported, nor reputed by any.

To which Mr. *Prynn* replied; That this was a most false calumny without the least shadow of truth; for first, though the title of his 'Rome's Master-Piece' was written and licensed for the press by a Committee of the Commons House (who earnestly desired him to translate and publish the letters and plot therein comprized, with such observations as he thought meet, and they should approve) on August 1, 1643, yet the book itself was not compiled, nor fully printed off till the end of August or after; the publication being near a month's space after the licence; before which time, not only *Mercurius Aulicus* had informed the world in print, 'That Nathanael *Fiennes* (by name, whom I named not) had bestowed Bristol on the king, &c.' which words were read out of *Aulicus*; but likewise many London *Mercuries* (and namely, that from Monday the 31st of July, till Aug. 7, p. 17.) had divulged in print, 'That Bristol was cowardly delivered to the enemy; that if col. *Massey* had been governor in his place it had not been surrendered at all, but held out still, &c.' And, in truth, the surrender thereof to the enemy in so short a space, was so far beyond all mens thoughts or apprehension, that the very first tidings of it made most men openly aver in every place, it was most cowardly and unworthily at least, if not treacherously surrendered to the enemies. This was not only *vox populi* in London, Westminster, and elsewhere, but *vox parliamenti*, the opinion of the Commons House (if not the Lords too) who were much dejected at the news; which the Defendant himself took notice of upon his very first entry into the House, after his return from his noble exploit; where every one looked strangely on him with a discontented aspect, and few or none of his dearest friends once moved their hats unto him, (as they usually do to all other members upon their arrival from any public service after some time, of absence;) and some of them minded him of *Gominey's* and *Weston's* case. Whereupon he, conscious to himself of the Commons general ill opinion of this action, to avoid their examination and censure, was enforced to make his apology for it openly in the House, August 5, 1643, in the close whereof (containing his bare relation, no ways satis-

factory) he desired, 'That what he had affirmed might be examined at a Council of War, that so he might be cleared or condemned accordingly as they should find the truth or falshood of what he had declared.' Which Passage of his, published in print long before 'Rome's Master-Piece,' is a pregnant evidence and acknowledgment, that the very House of Commons conceived this Surrender proceeded either from his cowardice or treachery; else there had been no need of any long apology, or such a reference as this to a Council of War. And indeed, his own printed Relation is so full of palpable shifts, and expressions of a timorous spirit, that the very reading of it confirmed me and others in this opinion, that the Surrender was cowardly or treacherous; and my passage in 'Rome's Master-Piece' concerning the inconveniencies of Bristol's surrender, with reference to the Welch and Irish rebels, were taken *verbatim* out of his own printed 'Relation,' p. 13, where thus he writes, 'If the enemy possessed Bristol, his neighbourhood of Wales will from time to time supply him with a body of foot. We shall lose a Port-town very important for the service of Ireland, and fit to give landing to the rebels of that place, or any other.' By all which it is clear, that I was not the first raiser of the report of his cowardly surrender, but that himself, and others then in print, had raised this report, before I published any thing to this purpose. Secondly, to put this out of question; 1st. It evidently appears by the deposition of Mr. *Edward Stephens*, *Thomas Monday*, *William Deane*, *John Baitin*, *Abel Kelley*, *Arthur Williams*, *Mrs. Hassard*, *Richard Butler*, *Mary Smith*, *Ethelred Huddy*, *Joseph Proud*, *Jeremy Halway*, *Anthony Gale*, and others, that 'both the soldiers and citizens of Bristol were much discontented with the governor's Parley and Surrender, when it was but in agitation, and openly said they were betrayed;' and that not they only, but the very enemies, concluded the Surrender to be cowardly, before we had any tidings of it. 2dly, sir *John Horner*, his own witness, deposeth, that in their coming up to London, before we had any notice of it, (they being the first who came thence and brought tidings of it) two or three ministers spake against it, 'as cowardly and unworthy.' 3d, Major *Allen* attesteth, that he and some other officers present in the siege, concluded it so in their private discourse, as they retreated from Bristol before they came to London. 4th, It was generally reported cowardly or traitorly both in London and Westminster upon the first notice of it; and some women in the streets openly called the Defendant a coward, for this unworthy action; which his own lady-mother condemned, and would not believe at first (affirming, that her son was of a more valorous spirit, and honourable extraction, than to deliver up a place of such consequence as Bristol in so short a time, where he had promised to spend his life, and lay his bones, rather than quit it;) and all this before I took any special notice of

it. Whereupon having some relation to Bristol, in and near which I had divers friends, I made a more particular enquiry into this action, from such soldiers and citizens present in the siege, who could give me the best information; and upon due examination of what was alledged on either part, I found the surrender such as I published it to be in 'Rome's Master-Piece,' by approbation of a Committee of the commons house; who both authorized the book, and concurred with me in this opinion. From all which it will appear, that I was not the raiser, nor first inventor of this bruit, 'That Bristol was cowardly and unworthily surrendered,' it being published in print by divers, and the common received opinion of all men in city and country, before I gave my censure of it, which I have here made good.

His tenth Argument was, That both the City and Castle were untenable against the enemy; Therefore the Surrender not cowardly, nor unworthy. Their intenablety, he endeavoured to prove,

1. From the weakness and insufficiency of the line, outworks, walls, fortifications both of the City and Castle.

2. From the want of a sufficient garrison to defend the town; to manifest which, he alledged, that he had not above 2,000 foot and horse to guard the place, which were not half enough, the works being near 5 miles in compass, and divided by a river, so as his men stood very thin upon the line, and had no reserves at all, unless for some particular places; by means whereof his soldiers, in most places, continued 4 or 5 days and nights together upon duty without relief. And to prove the Garrison insufficient, he insisted, (1.) On the Letter printed in his Relation, p. 14, complaining of the weakness of the Garrison of Bristol, and desiring 'an augmentation of it.' (2.) On his Excellency's Opinion, *ibid*, p. 16, 'who thought it necessary this Garrison should consist of 3 regiments of foot, 2 troops of horse, and 1 company of dragoons.' (3.) On a draught of an Ordinance presented to the House of Commons by the lord Say; for the settling of 'a sufficient Garrison at Bristol (*ibid*, p. 17,) wherein 'he propounded, that the Garrison might consist of 2 regiments of foot, the first, consisting of 1,200, the second of 1,000, the third of 800 men, and of 2 troops of horse, and one company of dragoons;' with less than which he could not possibly, as he said, maintain the City against the enemies forces that came then against it, who had few less than 70 colours of foot (*lieut. Clifton* affirmed, who told them) on Gloucestershire side, which *capt. Husbonds*, telling them with his prospective-glass, multiplied the colours to 100.

3. From his want of Powder and Ammunition, 'he having no match at all, and but 50 barrels of powder left, which would not have served them above 2 days;' which he endeavoured to prove by the proportion of powder they spent in 2 days before, and by a letter from *col. Waraloe* from Plymouth, attested by

*Master Nichols*, who writ, that they spent 40 barrels of powder there in 1 day, when they beat the enemy out of their works.

The City and Castle being therefore untenable in all these respects; and no succours near to relieve them in due season, his Surrender could not be deemed cowardly, but discreet and honourable to preserve the citizens goods, and the Garrison, consisting of above 1,500 foot, and horse, to serve the Parliament, (which then wanted men) in other places of advantage.

To which Particulars *Mr. Prynne* gave these ensuing Answers, First, That the Works about the City and Castle were very strong, defensible, tenable, against all the enemy's power, which he proved; 1. By the judgment and opinion of the Defendant himself, who never once complained of the weakness or insufficiency of the works or Castle till the Surrender, but oft affirmed the works to be very strong, sufficient, and tenable, before the siege, and that he doubted not to make them good against all the enemy's power, as *col. Stephens*, *col. Strode*, *capt. Bagnal*, *Master Powell*, with others, depose. And he publicly confesseth in his printed Relation, p. 10, that 'himself (and some others too) had a great opinion of the strength of the Castle,' before it was surrendered; though now upon a sudden, he would make your honours believe, and endeavours to prove it, the weakest most untenable piece in the world, having spent one whole day's time in demonstrating its several weaknesses, or rather in them his own, who, notwithstanding all these imbecilities, had so 'great an opinion of its strength.' And indeed did not the Defendant deem the works sufficient, the City and Castle strong, he must discover himself guilty, either of extraordinary folly, in putting the Parliament, Country, City, to so great costs to fortify, garrison, furnish the City and Castle with all necessaries to hold out a siege, if it were not really tenable, and of no considerable strength at all in the upshot; or else of extraordinary treachery, if he knew it not tenable, and yet gave it out to be very defensible, on purpose to induce the gentry and country in those parts to bring their money, plate, estates, provisions thither, as to places of strength and security, as we know they did, upon his promises to defend them to the last, that so they might become a prey to the enemies, who had all the ammunition, provisions, arms of those parts delivered into their hands at once, which they could have never gained, had not the Defendant fortified the Town and Castle, and affirmed them to be strong and tenable. Besides, his own many liberal promises to defend the Castle to the utmost, in case he was forced to retreat into it, and there to secure the best affected citizens and their goods, argues its tenability in his own apprehension. 2. As the Town, but Castle especially, was tenable in his own judgment, so likewise in the opinion of others. (1.) Of the gentry and country who repaired thither, as to a most secure sanctuary against the enemy, towards whose fortification

and defence they liberally contributed. (2.) Of the citizens, who all deemed the Town, but the Castle especially, to which they carried their estates, and above 3 months provisions, to be defensible against all the enemy's power, as appears by the Depositions of James Powel, Abel Kelly, Wm. Deane, Mistress Hassard, and others, and by the 'Tragedy of Bristol,' lately published by capt. Birch, Mr. Powel and other citizens of it; who writ thus of the Castle, p. 5. 'The Castle being strongly fortified and victualled, as being the last place to retreat unto, if the Town should be taken; being assured we should be able to keep it, till relief came, as a sanctuary for the persons and estates of such as were most active for the parliament; divers of us accordingly brought in our goods, with provisions for ourselves, and to help victual the soldiers that were to be entertained in it,' &c. (3.) By the opinion of divers soldiers of our own party, as col. Stephens, col. Strode, lieut. cols. Paleologus and Andrews, major Wood, major Allen, captain Bagnal, Nicholas Cowling, Mr. Hassard, Richard Linden, Edmund Warthorne, Thomas Munday, and Richard Butler attest. (4.) By the Speech of the enemy's own commanders, who viewing the Works of the said Castle soon after its surrender, swore 'God damn them, all the Devils in Hell could not have taken the Castle, it was so fortified, had not the governor cowardly surrendered it; that they might thank Fiennes for it: and that they could not have taken the Castle, had it not been yielded up to them beyond expectation:' as Mary Smith, Ethelred Huddy, Joan Battin, T. Thomas, and Michael Spark senior, witness.

And whereas he alledged, that sir William Waller, and sir Arthur Haslerig, deemed Bristol not tenable, which he endeavoured to prove by this passage in their letter to him, dated July 1, 1643.—(attested by Mr. John Ash, and printed in his Relation, p. 27,) 'We think the enemy will fall on this night, if not, to morrow morning; and if so, what good will this regiment do Bristol if we perish? It is a wonder to us to see our friends delay help where there is safety, &c.'—Mr. Prynn answered, 1. That this letter declares not their opinion concerning the intenable of Bristol, but their importunity to have speedy supplies from thence. 2. It expresseth that Bristol's greatest security consisted in their army's success, there being no danger of a siege as long as their army were masters of the field. 3. It proves nothing, that either the City or Castle might not have held out till relief should arrive from his Excellency, or that it could not hold out above three days longer. 4. The Defendant confesseth that had col. Popham's regiment continued in the Town, it had not been lost, and that his sending of them to sir William Waller, was the loss of the Town: therefore the Castle and Town in respect of the fortifications were both tenable, and had no want at all but of col. Popham's men, which he supplied by his new-raised regiments before the siege.

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2. Whereas he alledged, that divers gentlemen left the Town, and went away with sir W. Waller, and sir Arthur Haslerig, because they deemed it not tenable;—It was answered, That the reason of their departure, as themselves have confessed, was, the fear and assurance they had, the Defendant would not hold it out to the last; whereas col. Strode, col. Stephens, and others, who had his promise to hold it out to the utmost, continued with him still.

Fourthly, It was answered, That the objected weaknesses and defects of the works and Castle, were mere inventions of the Defendant since the Surrender, not thought or spoken of before, nor once propounded at the Council of War when the Parley was in agitation; where the debate of this particular of the tenability of the Town and Castle was never disputed, for if it had, the Town would have been held some four days longer, while this point had been debated, which hath taken up four days here. As for the Castle, the Defendant himself confesseth, and his lieutenant Clifton with major Holmes depose, that in the whole debate of the Parley and Surrender, the Castle was never mentioned nor thought on: therefore the weakness and untenability of it was no ground of its Surrender, as is now pretended. Finally, the Defendant in his printed Relation, p. 9, 10, and in his Answer, affirms; 'that the cause why the Castle was not tenable against the enemy, was for want of match and powder,' not in regard of its inconvenient situation and weak fortification, the only causes now insisted on; therefore this is but a mere pretence invented since the Surrender.

To the second pretence of wanting a sufficient garrison to hold it; master Prynn answered, 1. That the Defendant had 2,000 foot besides 200 volunteers, and 300 horse and dragoons at least; which were sufficient to defend the Town against all the enemy's power, as is infallibly evident by the repulses every where given to the enemies when they stormed it, and the great slaughter of hundreds of their men, with the loss but of three or four of ours, attested by his own witness, and published in his own 'Relation' and 'Letter to his Excellency.' And if the garrison were sufficient thus to repulse the enemy in his greatest strength and assault at the very outworks, then certainly they were abundantly able to defend the Town and Castle after the slaughter and wounding of above 1,700 of the enemies, had they been discreetly and courageously commanded by him; but doubtless they were more than enough to have defended the Castle, the body of the City, and that part beyond the bridge, after the suburbs entered, and the line wholly quitted on Gloucestershire side. 2. If the garrison had been too weak, he might have raised 6 or 8,000 able men more in the City, or retained 500 of sir William Waller's soldiers, whom he sent out of the Town to save the expence of provisions. 3. The garrison soldiers that were in it, would have fought, and held the City and Castle out against the enemy, thinking themselves strong

enough to do it, but the defendant would not permit them, as sundry witnesses attest; the want therefore of a sufficient garrison is but a mere pretence. 4. A garrison must be judged to be sufficient or insufficient to defend a place, only in regard of the enemy's strength that comes before it; that garrison being sufficient to defend a town against 7 or 8,000 besiegers, which perchance is insufficient to guard it against 20,000. Now we confidently affirm, that the garrison then in it, was sufficient to guard it against all the power then before it, as appears by the enemy's several general repulses with extraordinary loss to them and none to the garrison; by the enemy's paucity, not being above 7 or 8,000 at most, (most of them horse) and their quarters divided with an unfordable river, so as they could not come to rescue or relieve one the other. And whereas he pretended the enemy was near 14,000 strong, because they had about 70 or 100 foot colours only upon Durdham Down; this is a most fallacious argument: because every puny soldier knows it is a common policy in wars, to carry and display a multitude of colours more than there are companies afar off, at a distance, of purpose to amaze or terrify the opposites, and make themselves appear more numerous than in truth they are; which policy was now used. And whereas captain Husbands affirmed, that he told one hundred foot colours on Durdham Down; he saith, that it was but with his prospective-glass (an uncertain instrument to tell colours with) which multiplied the colours more than they were, lieutenant Clifton telling not seventy at most. And how full these companies under those colours were we shall produce only the testimony of Mr. Savidge a late soldier in Ireland, who deposed *viva voce*, 'That he was in Bristol within two days after its Surrender, when there was a general muster of prince Rupert's foot in the marsh there, at which both prince Rupert and Maurice were present, where he told, to his best remembrance, 52, but for certain above 42, of the enemies colours, which had not above 1,400 soldiers at the most belonging to them, for he particularly told, and took special notice of them: Whereupon he demanded of one of the officers on the place, why they had so many colours, and so few men? who answered, that they had many of their men slain and wounded in the siege.' So as by this account, they had more foot in the City by seven or eight hundred, when it was surrendered, than prince Rupert had without it, whose forces were most horse; and therefore a sufficient garrison to defend it against so small a force, besides, it appears by the Relation of Gloucester siege, p. 1, (attested by Mr. Pury to be true) that 'there were about 9,000 men more before Gloucester than there were at Bristol siege.' If then Gloucester garrison, consisting at the most but of 1,500 men, were sufficient to guard it against 9,000 more than were before Bristol, then Bristol garrison of about 2,000 foot and 300 horse, must needs be abundantly sufficient

to defend it against 9,000 enemies less than were before Gloucester. And whereas the Defendant alleged his letter of complaint for want of a sufficient garrison; this was in March 20, 1643, when he had but one complete regiment of foot, and but two troops of horse, not at the siege, when he had above twice double the number. 5. For his Excellency's opinion, and his own propositions, 'that the garrison should consist of three regiments of foot and three troops of horse and dragoons.' It was answered, that he had above that number of horse, and almost his full number of foot at the siege, and might have raised more had he pleased; therefore a competent garrison, according to his own desire. But that which quite takes off this objection, is, That such a large garrison as this, was not desired by him, or thought meet by his Excellency, only to defend Bristol against a siege, but likewise to defend Bath, Berkley-Castle, and the country round about for twenty miles space, and to suppress insurrections, if any should happen in the Western parts; as appears by his Excellency's letter and his own propositions. Therefore this pretence, that he had not a full garrison to defend the Town, because he wanted some of his number of foot, which should have defended Bath, and the country 20 miles round about, is but an impertinent plea. 6. For his want of reserves to relieve his men, himself confesseth, that reserves might have well been drawn from the main guard and Castle garrison, who were not in any fight or action during the siege; that he had some few reserves for some particular places, as there was occasion; that capt. Stokes, whose company was a mere reserve, stood in St. James's church-yard, when the enemy entered, though not employed to repulse them at the first, nor afterwards in the salley. If then he had reserve for some special services, he had, no doubt, a competent garrison; it being unusual to have a whole reserve, and a vast unnecessary expence to maintain a double garrison in any place. 7. Whereas he alleged that his men, for want of relief and reserves, would have quite been tired out in three or four days more, having been near five days on duty without relief; and that a man might die of a lingering consumption as well as of a fever. It was answered, That the garrison of Gloucester had no reserves at all, and were constantly upon duty without relief, above thirty-five days and nights together, yet held it out courageously, without dying of a consumption; and why Bristol garrison might not have done the like, being furnished with good store of Bristol milk, strong wines and waters, with as good success, had the Defendant put them to it, especially having some reserves to relieve one another, he could see no reason, but only his willingness to yield up the town to the enemy, for fear of a consumption, of which none are willing, or use to die, till nature be totally spent. 8. There was then no sickness at all in the City, no want of provisions or necessaries; no loss but of eight men

at the most when yielded: how then the City and Castle could be surrendered upon this pretence of an impossibility to keep them longer, for want of a sufficient garrison, we cannot conceive, especially since the women with their children proffered to go into the cannonsmouth to dead the bullets.

Thirdly, To the pretended want of match, powder, ammunition; (for a sufficiency of all other provisions and victuals was acknowledged) it was answered, 1. That we had proved [Joan Battin, Arthur Williams, major Wood,] there were 1,400 weight of match, besides a dray-load more of match in the Castle itself, when surrendered; and a match-maker with materials to make more match in the Castle as fast as they could spend it, besides much match in the City: and he might as soon have alledged want of water in the river Avon, as of match in Bristol, which makes match and cordage for all the West of England, and other parts. 2. For powder, we have proved by some witnesses, that there were at least 60 barrels in the Castle only, besides as many more in the City, Forts, and what was weekly made in the Town: yea some witnesses prove there were 70 double barrels in the Castle, left to the enemy. Captain Husbonds confesseth he had two barrels of powder in his fort, Arthur Williams attesteth there were 60 barrels in the Town, and major Allen brought nine barrels more from Malmesbury: And by his own printed Relation, there must be at least 90 barrels left; For he therein confesseth 'that he found 45 barrels of powder in the Town, when he first entered upon the charge thereof; after which he received 30 barrels more from London, 126 barrels from France, besides six or seven barrels weekly made in the City, all the powder taken out of shops, ships, and the nine barrels from Malmesbury; all which (admit the barrels out of France single) amount to 210 barrels; but to 336 barrels, if those from France were double, as they were: Of these he saith, sir William Waller had about 60 barrels, and that he spent about 60 more in the siege: deduct then 120 barrels out of 336, there remained no less than 216; or 120 out of 210, there were left 90 barrels at least by his own confession, allowing him all that was made or found in the City and ships merely for waste and musters. And whether there were a necessity of surrendering the Town for want of powder, when so many barrels remained only in the Castle, besides what was in the Forts and City, let all men judge: there being 60 barrels more than col. Massey had when Gloucester was first besieged.

But his grand pretence is, That this Powder would have lasted them only two or three days at most; whence this prodigal of his powder, not blood or coin, writes thus in his 'Relation,' p. 9, 10, 'That which made it evident, we could not hold out the Castle above 2 or 3 days, was, because we had ammunition for no longer time, having only 50 barrels of powder, and no match at all,' (no match for

himself, he means for cowardice, else there was match enough) 'and according to the proportion of powder, we had spent the days before, would not have served us above two days, and it is clear we should not have had any relief in six or eight weeks.' A pretty prejudicating fancy, not to be admitted on any terms: For by the same argument he surrendered it up now when he had 90, or admit but 50 barrels left; he would have then yielded it had he 500 remaining: For thus he would have argued, 500 barrels after the rate of 50 barrels we spent the two first days, would have lasted us but 20 days at most; and we could have no succour in six or eight weeks, therefore I was necessitated to surrender the Town for want of powder to hold out till relief might come: Nay, if he had 1,000 barrels then left, he would by this reason have yielded the Town up, for want of powder: for he argued thus; Col. Warnslow at Plymouth spent 40 barrels in one day; Ergo, I should have spent so many every day at Bristol, and by this computation 1,000 barrels would have lasted me but 30 days: and I had no hopes of relief in 40 or 50 days at nearest; Ergo, I was necessitated to yield for want of powder to serve me till relief might come. Had valiant Massey argued thus at Gloucester, he might have surrendered it to the king on this pretence the very first day and hour he came before it. He might have alledged (with better reason than col. Fiennes) we have but 30 barrels of powder in all to defend the Town with, and these will not last above one day, for col. Fiennes spent thirty barrels a day at Bristol, and col. Warnslow 40 in one day at Plymouth: Therefore 30 barrels against a far greater army of enemies, will not last above one day, and we lawfully may and ought, in true military policy, to surrender Gloucester to the enemy the first hour they come before it, for want of powder, since col. Fiennes surrendered Bristol for this very cause, when he had twice as much powder as we. Had Massey done or argued thus, what had become of Gloucester and the kingdom ere this? But since he made no such anticipating argument, but with his little store of powder (far less than was in the castle of Bristol only) maintained the siege for 31 days, and preserved the Town when he had more cause to despair of relief than col. Fiennes, Why the Defendant might not, should not have done the like at Bristol, I cannot yet conjecture. Indeed, he saith, in his Answer to the eighth Article, 'That he was less able to defend the Town 4, or the Castle 14 days, than Massey was to defend Gloucester 24 days with the same proportion of powder.' Certainly, if it were possible for Massey to defend Gloucester against a far greater force than was at Bristol with 50 barrels of powder for 31 days, it was more possible for the Defendant to have defended the Castle of Bristol of less circumference by three parts than it, with 90 single or 70 double barrels (which he surrendered) for 3 times 30 days, and till succours had arrived.

But to exclude all pretences, Mr. Pryn affirmed, that there must the same rule and law be observed in case of powder, ammunition, and men, as there is in case of victuals: And what that is, the king of Sweden's and his Excellency's Articles of War, newly reprinted, define, to wit, 'a present and absolute want of victuals, and all edible things to sustain nature.' And so a present absolute want and expence of all powder and ammunition; else any fort may be betrayed upon remote pretended necessities. A Governor must not argue thus, It may be I may spend 50 barrels of powder in two days: *Ergo*, 50 being all my store, I will presently surrender before I put it to the hazard, and yield up my present stores to the enemy before the two days expire: for then what place can be secure, or will hold out to real extremity? But on the contrary, he must thus resolve, I have thus much powder yet left, and by good husbandry it may last much longer than I apprehend; the enemy's ammunition, for ought I know, may fail before it, who knows not how small our stores now are; however it is better I should spend that little I have left against the enemy, rather than yield it up to supply their wants and annoy our friends: Therefore I will, yea, I ought in reason and duty to be reduced to a present real, not a surmised possible, want of powder, before I would yield up the fort, committed to my trust, to the whole kingdom's prejudice. This was col. Massey's resolution, this ought to be the conclusion of every Governor whatsoever, and of the Defendant at Bristol, which wanted neither fortifications, men, victuals, ammunition, cannon, powder, wine, beer, match, water, nor any necessities when it was surrendered, to defend it till supplies might have arrived. Therefore it was yielded up before any the least extremity, and so unworthily, and cowardly, both in law and real verity.

Fourthly, as to his best and most special plea or inducement, That he 'surrendered the City and Castle so speedily as he did, of purpose to preserve a body of 1,500 foot and horse for the service of the state, then wanting men; and the lives and estates of divers of our friends.'

Mr. Pryn answered, 1. That he might be ashamed of such a poor absurd pretence as this, to veil his cowardice: his Surrender in truth being but to save his own life and estate, not the garrison's, who were safer in the Town and Castle, than in any other place whatsoever, and lost both themselves and their estates by surrendering them, which they had preserved (as Gloucester men did their City and estates) had they manfully held them out to the last.

2. The Parliament had no less than 2,000 armed foot, and 300 horse in the city to serve them there immediately before the Surrender: yet this thrifty Governor would for their service and advantage surrender both City and Castle, with all the cannon, ammunition, arms, magazines, provisions, wealth, ships, prisoners, colours in it, to preserve them only 1,500 dis-

armed, plundered, dismounted men, to serve them God knows where or how. A very frugal steward surely for the republic, to lose them no less than 800 men in the very bargain, with the City, Castle, arms, and premises to boot.

3. Neither did he save those 1,500 naked men, as he pretended, nor yet a body of 300 to serve them elsewhere, he bringing scarce 100 of them with him into London. He lost the City, Castle, arms, all else in them before; only to save the men, and their estates; and after lost both the men and their estates, to save himself, never reserving so much as one ensign, drum, trumpet, upon the parley, to call or keep his men together, nor yet mustering them into order, nor marching away with them in a body, nor relieving them when dismounted, plundered, abused in his sight, leaving every man to shift for himself the best he might. And was not this a pretty saving of men to serve the Parliament elsewhere, thus carelessly to lose them, and of 2,300 men completely armed to serve them, to preserve scarce 200, stript of all their arms, and quite disbanded? God preserve the republic from such frugal stewards, such pernicious bargains!

4. Admit he had saved full 1,500 unarmed men to serve the state, was not this a sweet purchase, think you, to save so many mens' persons with the loss of such a place of consequence, strength, shipping, trade, command by sea and land, with the hazard of the whole kingdom? Better himself, and all those 1,500, nay, better 10,000 men had bravely lost their lives in defence thereof; yea, better the whole City had been ruined, if not possible otherwise to be secured to the state, than that the enemy should have so easily possessed it, to the City's, country's, and whole kingdom's infinite prejudice.

5. The Parliament needed no man at that time to serve them elsewhere, but they would extremely want Bristol were it lost, far more than they wanted men. It was a bootless service, then, to lose what they should certainly most of all want, to preserve only what they needed not.

6. These mens service was useful no where but in Bristol, where the state only needed and expected it; and those who would not do them the best, the uttermost service there where they most needed it, with the hazard of their lives, would hardly do them service elsewhere, unless they might have victory in a bag, (as Ulysses had the winds) and might fight only where they were sure of no resistance, to gain 'Sarmacida spolia, sine sanguine et sudore.'

7. They could do the Parliament no such good service any where as there, in keeping Bristol; there most of them were in their proper center, their native soil, where they fought for their lives, estates, lands, houses, wives, children, liberties, in the very height and strength of their spirits; there they were intrenched in strong forts and bulwarks, well manned, victualled, ammunitioned; where, in

respect of the enemy's disadvantage in assailing, and their own conveniency in defending, they might have slain one hundred enemies for one of ours, as they had done before, killing and wounding above 1500 of the enemies, with the loss only of eight of the garrison; after which rate they might have slain the enemy's whole army with the loss only of one hundred men, (a service they could never hope to attain to in the open fields) and also have saved not only 1,500, but 2,400 of their own men, to serve the state, together with the City, Castle, ships, arms, magazines, and western parts, all depending on them; and that with the total ruin of the enemies forces.

8. It is very improbable that these garrison soldiers and citizens would adventure their lives to serve the state in any place else, who would not do it on their own dunghill, and in their proper charges, where they were most concerned; those that will not fight it out to the utmost in a fort where they have all advantages, will certainly not do it in the open fields, where the enemy and they are upon equal ground. And it is not very likely, that men disarmed, discouraged, left to the scorn and plunder of the enemies, stript of all their fortunes, driven from their native habitations, and brought to trust to the enemy for their lives, rather than to God and their own swords for victory and security, should fight for the Parliament without arms, or any other encouragement in the open fields.

9. Admit he secured the Parliament 1,500 pillaged, naked friends to serve them elsewhere; yet sure I am, he hath truly gained them 15, nay, 50,000 enemies, with all the arms, strength, ports, forts, traffick, provisions, wealth, that the West of England, Wales, or Ireland can afford, whence divers thousands of enemies and rebels are lately arrived in Bristol ships, to cut our throats, possess our estates, yea, lay our kingdom waste. And was not this a good piece of public service worthy our highest applause?

10. The very loss of Bristol (for aught any wise man can yet perceive) is like to cost the Parliament and kingdom the lives of above 15,000, nay, 30,000 men, (as it hath cost them some thousands already) ere Bristol and the West be reduced to that condition they were when the City was surrendered. And is not this a sweet piece of good husbandry, to endanger the loss of 30,000 mens lives, but to save the lives of 1,500 only, and that when they were in greatest security, and no danger at all of being lost, had they stood it out?

11. The Defendant and his men were purposely placed in the City and Castle (to the kingdom's vast expence) to this very end, that they might preserve them from the enemy, even with the loss of their lives, rather than the enemy should possess them to the public prejudice: And yet this valiant gentleman is so discreetly sparing (at leastwise of his own, if not of their lives) as rather certainly to lose the Town and Castle, than to hazard the loss of all

or any of their lives, contrary to his very trust and duty.

12. Might not every Governor and General upon this pretence deliver up any Fort, City, Town, Country to the enemy, without shot or stroke, to preserve the lives of their men to serve the Parliament elsewhere? Had col. Massey at Gloucester, or col. Wanslow at Plymouth, made this plea of saving their own and their garrisons lives, to serve the Parliament elsewhere, these Towns might have been yielded up upon better Articles than Bristol long ago. Had his Excellency been acquainted with this frugal state-policy by col. Fiennes, at the famous battles of Edge-Hill and Newbury, he might easily before the fights began, have sounded a Parley, and yielded up all his ammunition, cannons, arms, carriages, colours, drums, cornets, prisoners to the enemy, and given them the honour of the field, of purpose to save the effusion of Christian blood, and preserve the lives of his soldiers to serve the commonwealth in other places (there being the same pretence of reason in these cases as in Bristol:) And then I pray, what had become of our Parliament, religion, laws, liberties, estates, and lives too ere this? I doubt they had all been lost by this new kind of saving. And then what service could these men do the Parliament or state when all was certainly lost? We owe our lives, limbs, fortunes, all we have, to our dear country; delete this principle out of mens hearts, and you dissolve, yea ruin all civil society. It is therefore no excuse at all for the Defendant to lose this place of consequence to save a few mens lives, or estates, together with his own.

13. It is the greatest honour of a Governor, and a soldier, to die fighting; to lose his life to save his country. The very heathen Romans, and Tully, teach us thus much martial divinity: 'Dulce et decorum est pro patria mori.' But this unmanly Governor was clear of another mind; he will neither hazard his own nor other mens lives to save a City, a Parliament, a Kingdom. Better all these were lost than his life or garrison endangered by any bloody assaults. And is not then this his principal excuse the highest manifestation of a degenerate cowardly spirit? Our Saviour Christ informs us, 'He that loseth his life' (by adventuring it for his religion, God, and country) 'shall save it; yea, and the place committed to his trust, as Massey and others have done: 'but he that will save 'his life' (or others) by a cowardly and unworthy Surrender, as this gentleman did, 'shall lose 'it,' and that deservedly, by the ax of justice, for such unmanly cowardice. It was Caiaphas's divinity concerning Christ himself, 'It is expedient for us that one man should die for the 'people, that the whole nation perish not.' And it should have been the Defendant's honour and integrity to have said the like; better that I, being but one man, yea, better my whole garrison had died in defending this noble City, than that the whole nation should perish through its Surrender, to preserve our

lives. It was the Defendant's promise before the siege, 'to die in Bristol's defence, and lay 'his bones therein;' but this he now professeth, was spoken only in policy, to incourage and keep the soldiers in heart, not in reality with any intent to perform it. Certainly if it be a sign of a good shepherd or Governor 'to lay 'down his life for his Sheep,' his country, it is an undoubted badge of an evil and timorous one, to refuse to do it after so many promises. This is the Defendant's case, who would rather adventure his head in a martial trial, than his life in a breach, and for this deserves the loss of both.

The next Debate was of a point of principal concernment; namely, 'What should be judged 'utmost extremity in regard of men, ammunition, victuals, or intenablety of any fort, to 'justify the Governor's Surrender of it to the 'enemy? And whether the Defendant were reduced to any such extremity ere he surrendered Bristol?

For resolving of this grand question, Mr. Prynne alleged, that his Excellency's Ordinances of War determined, 'That whosoever 'yieldeth up any town, fort, magazine, victuals, 'ammunition, arms, or that moveth any such 'thing but upon Extremity, and that to the 'Governor, or in council, shall be executed as 'a traitor.' This is the general law. Now what this Extremity is, will be the sole question; for resolution whereof we need go no further than to the several cases of Gomineys, Weston, Cressingham, Elmham, and the bishop of Norwich, antiently resolved in Parliament, to the late king of Sweden's military laws, and his Excellency's own explanation of this point (taken out of them) in the second edition of his "Laws and Ordinances of War," which reduce Extremity to these three Heads (where there is no absolute present want of men through slaughter or mortality to defend the place,—1. 'If the 'garrison be reduced to an utter extremity of 'all eatable things whatsoever, so as they have 'no kind of food whereby to subsist, but must 'necessarily perish by famine, if they yield not 'presently.—2. If there be no hope at all left 'them in such a case of any succour or relief.—3. If without parleying at the very instant, 'both the forts, men, and arms, must of necessity fall into the hands of the enemy.' If the Governor can prove by pregnant witnesses that he was really reduced to all these extremities, then he is to be acquitted; but if he fail in real proof of any one of these, then he is to be condemned and executed as a traitor, both by the king of Sweden's and his Excellency's martial laws: and this is the general law-martial of all nations, approved by our own common law, of purpose to establish military discipline against cowardice, negligence, and treachery, which are apt to be varnished over with specious though false pretences.

To prove this definition of Extremity, Mr. Prynne produced the last edition of his Excellency's Ordinances of War, printed by his special command, and the Judge-Advocate's li-

cence. But the Judge-Advocate opposed the reading of them, pretending they were not yet approved by his Excellency so far as to be used at a Council of War, and that they were made since the loss of Bristol.

To which Mr. Prynne replied, That they were printed by his 'Excellency's special direction, and enjoined to be observed by all,' as appears by the Title, having been first voted and agreed on at a Council of War; that the publishing of them in print, by special command, was the highest approbation that might be; and it were in vain to ratify and publish them, if we might not make use of them at this Council of War, in a case which falls punctually within their resolution: and though Bristol was surrendered before the last edition of these ordinances, yet this clause which defines Extremity being only an exposition of the former laws, and no new additional law not formerly published, we might and ought to read it of right, to determine this difficulty, for which it was purposely added. But the Advocate being very earnest against the reading thereof, the Council referred it to my Lord General, whether the Explanation in the new printed Ordinances and Laws of War should be used at this Trial? Who declared his judgment, they should not now be read, or used.

Whereupon Mr. Prynne laid down this conclusion for a positive and necessary principle in war, 'That utmost extremity to justify the surrender of any garrison, town, fort, or place of 'consequence, must not be an imaginary, or 'possible extremity, or a conjectural improbability of holding out any long time, but a real, 'necessary, and present impossibility of holding out any longer against the enemy: 'affirming, 'That no Governor of any fortified 'town or castle ought to surrender the same 'upon any pretence of extremity, but where 'there is an absolute, real, and present impossibility of holding out any longer than that 'very instant time wherein he makes the Surrender.' The Reasons whereof (he said) were very observable, grounded upon the highest principles of policy and war; as namely,

1. To retard the enemy's progress and conquests, lest a whole kingdom should be lost in a moment, as all England would have been long ere this, had Gloucester, Hull, Plymouth, Exeter, and other places, made no longer nor better resistance than Bristol, though not of such importance to the realm, nor so well furnished as Bristol with all manner of provisions for a siege. A general of an army, governor of a town, must defend his part with respect to the whole kingdom; and therefore though he cannot hold his ground, or guard his fort absolutely, or for any long space against the enemy, yet he must lose ground but by inches, not give it away by whole towns or countries; and though he cannot defend his charge still, yet he must hold out till the last minute to stay the enemy's progress, and prevent a sudden total conquest of the realm.

2. To spend the enemy's men, ammunition,

provisions, a long siege being the usual bane of any army; an infinite charge, disadvantage, discouragement to the besiegers, but great advantage, encouragement to the opposite party.

3. To give a good precedent and encouragement to other governors, garrisons, forts, adjacent counties, and to uphold martial discipline thereby; the holding out of a place of consequence (as is evident by the late example of Gloucester) giving great encouragement to the adjoining places to hold out strenuously to the last, and animating all the party adhering to them: whereas the sudden loss or yielding up of an eminent city, strikes terror into all adjoining towns, forts, counties, who presently wheel about to the conquering enemy, as appears by the example of Bristol; whose unexpected surrender drew on the loss of Dorchester, Barnstable, Exeter, Dartmouth, with most of the western parts; and it had hazarded the loss of London, yea of the whole kingdom, had the enemies pursued their victory to London-walls, and not been unexpectedly beaten off at Gloucester, endangered by Bristol's Surrender, and quite given for lost by col. Fiennes and his officers.

4. To give advantage of surprizing other places, or quarters of the enemies, to cause either a raising of the siege by such diversions, or to get something equivalent to the place besieged, in case it should be lost, or not relievable: whereas a sudden unexpected surrender forestals all such diversions and compensations of losses. Had Bristol been held out to the utmost, in case his Excellency could not have timely relieved it; yet he might have carried Oxford, or surprized divers of the enemy's garrisons, forts, men, arms, horse, in other quarters, whilst they were occupied at Bristol; whereas its sudden surrender before three full days siege, anticipated all diversions, and recoveries in value, to help balance Bristol's loss.

5. To deprive the enemy of the ammunition, provision, victuals, and magazines in the Town and Castle; which if spent in their defence, to the enemy's loss and slaughter, the cannons cloyed, the arms made unserviceable to the enemy, they could not have readily been supplied from other parts, and so the Town and Castle might have been easily regained by a present siege, in case they had not been seasonably relieved: however, the victory at least had been less honourable, less advantageous to the enemy; who by an unworthy speedy surrender gained a City and Castle ready fortified, victualled, ammunitioned, provided with all necessaries to their hands, fit for present defence, without any cost or labour; with cannon and arms almost sufficient to furnish an army by land, and shipping enough to set out a strong fleet by sea.

6. To preserve the adjacent towns, forts, counties depending upon the holding out of the place besieged, who by a cowardly present surrender may be in danger to be surprized on a sudden, and taken unprovided of ammunition, men, arms, victuals, or sufficient fortifica-

tions. If a town well fortified, manned, victualled to hold out three months siege in most men's opinions, shall be cowardly yielded up before extremity, in three days space, as Bristol was; all the neighbouring garrisons, counties, cities, castles, who depend upon its three months defence, are in danger of surprisal, and being taken unfurnished at unawares, as infinite historical examples evidence; and the unexpected Surrender of Bristol (as the Relation of Gloucester siege truly stiles it) was likely to have endangered Gloucester, whose vigilant Governor would doubtless have been better furnished with men, ammunition, victuals, had not Bristol's over-hasty Surrender forestalled his intentions. And who knoweth not, that this Surrender might have endangered the loss of London through an unexpected surprize, had the enemy presently advanced towards it, as some advised?

7. If any town be yielded up before absolute extremity and necessity of holding out longer, there is a most certain present loss to the state, (perchance irrecuperable for the future too) but if held out till extremity, there is still either a probability or possibility of securing and preserving it left, even to the utmost minute of its tenability, and that by infinite casualties, contingencies, and passages of Divine Providence, transcending all human apprehensions. As, (1.) By unexpected supplies from other parts. (2.) By diversions or invasions of the enemy's quarters elsewhere, engaging them to raise their siege. (3.) By successful sallies. (4.) By extraordinary slaughters of the enemies upon disadvantageous assaults, of which they of Bristol had former experiences, where the enemy lost 100 men to one of ours, and had near 1,700 slain and hurt in less than three days, with the loss only of 7 or 8. (5.) By sudden sickness in the enemy's camp. His Excellency, as this Defendant affirmed, had 2 or 300 men that fell sick about this time in his army in one day, and 1,000 or more in one week's space, and the enemies, for aught he knew, might have undergone the like mortality. We read that God's Angel in one night slew in the king of Assyria his host, an hundred fourscore and five thousand men, and thereby raised Jerusalem's siege: And for aught the Defendant knew, God might have sent an equivalent destroying plague among the God-damn-me army of cavaliers, who besieged Bristol. (6.) By unseasonable tempestuous weather, which had broke up many leaguers. (7.) By the death or slaughter of some principal officers or commanders. (8.) By sudden panic fears and apprehensions of approaching rescues, of which we have an eminent Scripture precedent in the besiegers of Samaria; to omit profane histories. (9.) By sudden mutinies and discords among themselves, which in Scripture, and stories, are copious. (10.) By scarcity of provisions, with which the enemy before Bristol was very much pinched, as Mr. Savidge deposeth. (11.) By want of ammunition, the enemy's condition at Bristol, who had spent

most of their powder and shot, of which they had far less in their camp than the Defendant surrendered to them in the Castle. (12.) By despair of success, for which very reason the enemies had retreated from Bristol in two or three days more, had those who entered the lines at first been repulsed, as they might have been with ease, though the Defendant alledged they had taken a solemn oath not to raise the siege till they had taken the Town; which might have been as easily frustrated as the oath of the Jewish conspirators, 'Who vowed they would neither eat nor drink till they had murdered Paul;' yet missed of their design. Besides all these, whereof histories afford plenty of examples, there are infinite other contingencies frequent in story, whereby God, out of his Divine Providence, hath many times miraculously preserved forts and cities, even in their utmost extremities, against their potent enemies; when they have been resolute to stand out to the last, especially in the cause of God, religion, or their country. And in such a case as this is, where we may with confidence expect the best and speediest assistance the Lord of Hosts, and God of Heaven can provide for us, (if we dare rely upon his promises or providence without distrust) he deserves not the title of a soldier, much less of a Christian soldier, governor, or commander, who will not trust God to the utmost exigency, and rely upon his power, wisdom, faithfulness for seasonable deliverance and relief; which the Defendant, for want of faith as well as courage, durst not do, and so yielded up all.

8. If absolute and present impossibility of longer defence be not made the only rule of utmost extremity, we shall open a wide gap to the treachery, cowardice, negligence, indiscretion, avarice, ambition, discontent of every governor and commander, to the overthrow of all martial discipline, and expose the whole kingdom to speedy loss and ruin; it being an easy matter for any governor or commander, how cowardly, false or treacherous soever, to invent many plausible excuses, many forged, supposed, probable extremities, and to find witnesses under his command to attest them; and by pretext thereof to betray and yield up the most considerable towns, castles, forts, throughout the realm, to the enemy, without any stroke at all, or after a few days counterfeit siege, the better to palliate his treacherous designs. And therefore upon all these grounds, as likewise to reduce extremity to a certainty, no other extremity ought to be admitted, but only a present absolute impossibility of holding out any longer; to which the Defendant was no ways reduced, as we have already proved.

In opposition to these Reasons, col. Fiennes maintained these three things. The first was this, That whenever the principal rampart of any town was once entered by the enemy, this was a sufficient extremity to justify both a parley and surrender. But the line of communication which the enemies entered at Bristol was the principal rampart, as he pretended:

Therefore his surrender of it upon their entering the line, was justifiable.

To which was answered: 1. That the enemies entering the principal rampart, is no lawful sufficient ground of a parley or surrender, no, nor yet the taking of the principal fort (for the reasons aforesaid), as long as the other forts or towns are tenable; by holding whereof the enemy may in time be repulsed out of the works they have entered. If this were true military doctrine, then London should by like reason be surrendered to the king, in case he came before it, together with the Tower, as soon as the line of communication (the chief rampart) were entered, or any out-fort taken; and an whole army should yield the field, if one troop or company of the forlorn hope were routed. 2. Though the line of communication of Bristol were entered in only one place, yet not one of the out-forts was taken; the body of the City defended by the key, and all that part beyond the bridge, together with the Castle (the chiefest fort, rampart, scourge), and every street in the Town both tenable and defensible, as we have formerly proved; therefore the enemies bare entry within the line of communication only, was no extremity at all to justify its Surrender, in the judgment of any but extreme cowards. 3. That the maintaining of such a cowardly paradox to excuse this surrender, was an argument it proceeded from cowardice, and a sufficient proof of a timorous spirit.

The Second was, That if the enemy had once entered or possessed the Town, the Castle ought not to be kept to the prejudice of the citizens, but ought to be surrendered together with the Town, by the constant practice and policy of war in all places, all ages. In which he was so confident, that he challenged Mr. Prynne to shew one precedent to the contrary, and produced divers examples in foreign parts, out of French Mercuries and Gallobelgicusses, with some late examples at home to justify this assertion: As namely, the example of Leipsick, Mentz, Philipsburg, Prague, Augsberg, the Burse, Breda, and other Towns abroad; of Portsmouth, Exeter, Lincoln, Worcester, Winchester, Chichester, Malmesbury, Hereford, Taunton Town and Castle, Bridgewater, Dorchester, Dartmouth, Lime, Reading; where he saith, the towns and castles were both surrendered together, and not the Castles held out when the Towns were taken; yet none of these Governors were ever questioned by the King or Parliament. And he gave this reason to prove this paradox, that if Castles should hold out when the Towns were taken or yielded, it would much dishearten the citizens, and make them unwilling to entertain or assist any Garrisons in the Castles.

To which Mr. Prynne retorted, That this was the grossest absurdity that ever was broached by any man in his right senses; and had he not been intoxicated with a spirit of pusillanimity, he would never have invented such a poor subterfuge, or made such an ignorant challenge as this to save his endangered life. For, 1. Castles

and citadels, in most towns, are usually the strongest, most tenable, most impregnable places of all others, best able to resist and annoy the enemies; the out-works, line, and towns themselves less tenable and resistible than they: to argue therefore, that the Castle ought to be surrendered as soon as the Town is entered or taken by the enemy, is in effect to aver, That the strongest fort of all must be yielded, because the weakest part of all is entered. If this were a good soldiery argument, then, by the self same reason, if there were twenty strong forts or castles about a town, and but one weak one, the whole twenty strong ones, though tenable, must be yielded, because only the weakest one was forced; and the Lord Mayor of London (in case that City were besieged) might yield up both the Tower, Town, and all the other forts to the king, if the weakest part of the line were but entered, or Hyde-Park or Islington fort once entered by the enemy: yea, by this kind of soldiery, if the weakest troop or company in an whole army be routed, the main body and battalion of it must presently yield up themselves and the field too, because this weak party thereof is defeated: and his Excellency at Edge-hill fight, where some of his horse and foot ran shamefully away upon the first charge, should by this senseless policy have fled or yielded, and not won the day, (as he did with greater honour) because the worst and weakest part of his army was routed. But since all men know, that the strongest forts and parties are to defend the weakest, not the feeblest them; and the Castles in cities made more strong and tenable than other parts, for this very purpose, that they might hold out when the weaker parts are taken, (this being the only use for which they were built and made so strong) the reason holds good on the contrary part; that because the Town, which is the weakest, is taken, therefore, for this very reason, the Castle, which is the strongest part, ought to be held out, and not surrendered.

2. Castles in most towns command the whole towns where they are, and those who are masters of them are still masters of the places, and will soon regain the towns; but if once surrendered, the enemies become presently absolutely masters of both; and no hope is left of regaining either Town or Castle again, without a siege, or infinite expence and danger. Therefore there is all the reason in the world to maintain the Castles to the utmost, when the Towns are entered, and not to yield them up together both to preserve the dominion of the place, and regain the Towns with ease and speed.

3. As long as the Castles hold out, the enemy can enjoy little benefit by the Towns, and have less security in them. Besides, their conquest is incomplete, less terrible, not advantageous; their progress from thence to other places retarded, unless they leave the Castles unbesieged. And their forcing of the Castles will consume them far more men, ammunition, money, than the entering of the Towns, which,

without the Castles commanding them, are little worth. Therefore for all these reasons it is apparent, that Castles ought to be kept by the constant exquisitest grounds and policy of war, whereas the Towns themselves are taken or surrendered.

4. Neither will this be a discouragement, but the greatest encouragement that may be to the citizens, that the Castles must thus hold out to utmost extremity: (1.) Because the persons and estates of the wealthiest citizens will be there secured against the enemy's rage and plunder, (as the honest Bristolians thought to have saved their persons and estates, by retiring into the Castle when the Town had been forced, which were lost by surrendering it). (2.) Because by keeping the Castles the Towns are certain to be preserved or regained in a short time, and thereby their liberties and privileges. (3.) Because by this means they shall not be long under the absolute power of the enemy, and new lords to controul them; whereas if the Castles be yielded, their persons, estates, laws, liberties, will be wholly exposed to the enemies will and pleasure, and subjected to their tyranny. Therefore, upon all these grounds, the Defendant ought to have kept the Castle of Bristol, being strong and tenable, to the utmost extremity, and not to have surrendered it with the Town, though the City had been taken, or yielded by composition.

5. For example, Mr. Prynn answered, That if he had his books about him, he could shew him at least one thousand examples in story to one of his, where Castles have held out when the Towns were taken or yielded; but since his challenge was to produce but one example to the contrary, he should out of present memory furnish him with divers. The first was a very ancient and memorable one recorded in scripture, (which he wondered the Defendant, who had read the Scriptures, could forget) to wit, that of Thebez, Judg. ix. where we read, 'That Abimelech went to Thebez, and encamped against it, and took it. But there was a strong Tower (or Castle) within the City, and thither fled all the men and women, and all they of the City, and shut it to them; and got them up to the Tower;' but did not yield it up, though the City was taken. 'And Abimelech came to the Tower, and fought against it, and went hard to the door of the Tower to burn it with fire: And a certain woman cast a piece of a millstone upon Abimelech's head, and all to break his skull: Then he called hastily to his armour-bearer, and said unto him, Draw thy sword, and slay me, that men say not of me, A woman slew him; and he thrust him through, and he died; and when the men of Israel saw that Abimelech was dead, they departed every man to his place.' Thus the siege was raised, the Town preserved, regained, and that by a woman. Had col. Piennes, in case the City of Bristol had been taken, retired to the Castle, according to his promise, and there stood upon his guard, perchance prince Rupert coming for to

assail it, as Abimelech did the Tower of Thebez, might have been slain with a millstone by one of those valiant women who offered to go up to the cannons mouth to dead the bullets, in case he or his soldiers were afraid to charge; or at least by some musket or cannon-bullet; and so the siege might have been raised and the Town regained: No man could tell whether such an accident might not have happened, had the Defendant patiently expected the issue of God's providence in the Castle till utmost extremity, which no man ought to despair of, since, as the Wise Man informs us, 'Time and chance happen alike to all men.' Besides, the siege might by sundry other forementioned casualties have been raised, and the City preserved. But alas, the Defendant was so far from having the faith and courage of a man, that he fell infinite short of the courage and prowess of this woman of Thebez; styling the holding out of the City and Castle, though but a day or two longer, a desperate resolution, &c. not staying till they were assaulted, but presently yielded up both without any assault, contrary to this Scripture precedent, which he had neither heart nor courage to imitate. But lest he should pretend this one example to be singular, I shall furnish him with sundry others, which I wonder he could forget. If he had read the Roman story, he should have found the Capitol defended against the Gauls when the City of Rome was taken; and preserved from surprize only by the crying of a goose. In our unhappy antient civil wars, the Tower of London hath oft-times been held out when the City hath been yielded; the like we read of the Castles of Edinburgh, Berwick, Northampton, Salisbury, Devizes, Oxford (in the time of Maud the empress), Rochester, Bedford, Nottingham, Pomfret, frequently kept in former times when the towns were yielded, or taken: and, not to rove farther for precedents, even Bristol-Castle itself was held out by king Edward 2, and the younger Spencer, in the last year of this king's reign, against the queen and her son prince Edward, after the town was yielded up to them by compositions to save their lives and goods; and in these days Bristol was stiled and reputed a good Town, and a strong, well closed, standing on a good port of the sea, having a strong Castle, and the sea beating round about it, writes the historian. Certainly had this gentleman well studied the history of Bristol while he was there, he might have found a precedent for holding out this very Castle after the City surrendered, and then he would not have made such a silly challenge, to shew him one such example. But if these antient examples had been forgotten, yet we have fresh precedents enough of this kind, which we cannot but remember. The Castles of Warwick and Nottingham both held out lately against the king's forces, when the towns were taken. Nay, the very Close at Lichfield, though no Castle, but a Cathedral, held out against the lord Brooks, when the town was yielded: and since the Parliament took it, against all prince

Report's forces, almost as many weeks as Bristol itself did days, and against near as great an army, though it had not above 160 soldiers in it: Yea, when the prince had drained the mote about it, sprung a mine, blown up a great part of the wall, and entered the breach with above 200 men, being 50 more than first entered the line at Bristol, yet the garrison there was so far from yielding the place by a Parley, that they encountered the enemies, took 200 of them prisoners, beat the rest out, made good the breach, till all their powder within half a barrel was spent; and then came off upon more honourable terms by far than the Defendant at Bristol, (which was not so much as assaulted, much less entered) even with their colours displayed, their bag, baggage, arms, and restitution of their prisoners taken by the enemy: which conditions were most punctually performed, because they shewed themselves men of valour, and had their arms about them to defend themselves from violence; whereas the Defendant yielded up both arms and colours. To these I might add the examples of Limerick and Galloway Castles in Ireland, who held out many months against the Irish rebels, after the towns were yielded; Of Stafford Castle, defended long against the parliament after the Town taken; and the fresh example of Lincoln, where the Close was kept against the earl of Manchester, after the Town surrendered. But examples of this kind are so frequent in all stories, and so experimentally known to every one who hath been bred a soldier, that I shall forbear to trouble this honourable council, so well versed in histories and war, with any more precedents of this kind.

6. To his objected precedents, Mr. Prynne answered: (1.) That they were only alledged, not proved by witnesses or records; Gallo Belgicus being neither a legal testimony nor record to be given in evidence at a trial. (2.) That many of his precedents were foreign, and it did not legally appear what were the grounds of those towns or castles speedy surrenders; which in all probability was want of food, there being such a scarcity of it in Germany by reason of the long continued wars, that few towns or castles were victualled for one fortnight's siege: and perchance they wanted ammunition as well as food. (3.) It appears not whether those governors were not questioned, and capitally punished for delivering up these towns and castles; since we find that in these late German wars, some have been condemned and executed for yielding up towns too suddenly. (4.) Many of our towns he named had no castles in them, at least none fortified to keep out an enemy. (5.) Although the surrendering and quitting of these towns to the enemy, was connived at, and never brought legally into question as the Surrender of Bristol now is; yet they deserved to be both questioned and punished, as the quitting and yielding of Taunton, Dorchester, Lincoln, Banbury, Oxford, and other places: And if so, these examples can be no justification or extenuation of the Defendant's crime. It is no

plea for a thief, when taken and arraigned, to say, such and such thieves have robbed others, and yet were never indicted nor punished for their robberies: *Ergo*, my robbery is lawful, and I must not be condemned for it. Had they been apprehended and indicted, it had been no plea for them, that some other thieves escaped without questioning, therefore no justification or excuse for him who is arraigned; yet this is the sum of the Defendant's argument: Other governors in Germany and England, who have cowardly and treacherously surrendered and quitted garrison-towns, have not been questioned for it; *Ergo*, I must not be condemned or blamed for my cowardly traitorously surrendering of Bristol, now I am actually impeached and convicted for it. If this be a good plea, to what end are martial laws? Every coward and traitor shall then escape scot-free, though he undo and betray a whole kingdom.

7. Some of the Towns he instanced in, were cowardly quitted, or yielded up upon his Surrender of Bristol, (as Barnstaple, Dorchester, &c.) whose loss must be put upon the Defendant's score. As for the loss of Exeter, which he instanced, it was answered: (1.) That Exeter was besieged, and held out more months than Bristol did days; being beleaguered above three months space ere it yielded: and had he held out Bristol so long, as he easily might, it would have been relieved in half the time, and kept safe till now. (2.) That the yielding up Bristol was the loss of Exeter, which was much discouraged by its ill precedent, and left destitute of all hopes or probabilities of relief by its Surrender; being too remote for his Excellency to relieve it, without endangering the loss of Kent, London, and Essex, during his absence hence; and there being no other forces near, that could in any possibility or probability relieve it: yet though it were thus hopeless of all succours, and much discouraged with the ill examples of Bristol, Barnstaple, Dorchester, Bridgwater, Taunton, and other western towns, it held out till the principal fort was taken, and all their powder spent; yea, the garrison and citizens were all resolved to have kept it with their pikes and swords, when their ammunition was exhausted, had they but any probable hopes of succours from any part; of which being utterly hopeless, they did for want of powder, after above three months siege, surrender the Town and Castle upon somewhat more honourable terms than the Defendant did Bristol. Wherefore this precedent was so far from justifying his ignoble act, that it was a pregnant testimony and conviction of his guilt in not holding out Bristol three days, when Exeter held out above three months siege, and spent all their ammunition before they fell to parley.

The third thing maintained by col. Fiennes was, That some generals had sentenced commanders to death for being too obstinate in defence of forts, and standing it out over-long; and that a French author (there produced) affirmed, it was a capital offence to stout out a place over-long.

To which Mr. Prynne answered, 1. That this new doctrine was certainly calculated only for that meridian where this great soldier was born, and fit for none but it. 2. That the Defendant was so far from this fault of stouting it out over-long, that he deserves to lose his head for yielding Bristol up too soon; which certainly, in all mens judgments, is the more capital crime of the two. 3. That no one precedent could be produced in story, where ever any Governor of a town or fort was judicially condemned or executed by the prince or state that intrusted him to keep them, for holding them against the enemy over-long: And if the Defendant had been guilty of this crime, we would have been so far from impeaching, that we and the whole kingdom should have honoured him highly for it, though we have both just cause to prosecute him for the contrary; for which sundry governors have legally been condemned. 4. That it was a most ingrate requital to execute any man for his over-much valour and fidelity; and if this were once allowed for martial law, it would quickly make all governors and soldiers cowards or traitors; therefore certainly the Defendant had much mistaken his French author, who writes only in general, that some have been put to death for stouting and holding out a town over-long, without defining by whom this was done. He pretends it was done by those who intrusted them with the towns, of which no example can be produced; but certainly the author meant it only of the enemies, who have sometimes put a governor to death when a town hath been forced, for holding it over obstinately out against them, for which there are divers precedents. And in this sense (which doubtless is the true) it suits very well to the Defendant's case. The poor man was excepted (as he tells us) out of the king's pardon sent to Bristol, and so like to suffer if he held the Town or Castle till it were forced by the enemy: Wherefore to prevent all danger, and save his best-beloved life, he thought good to avoid the rigour of this law, by purchasing his impunity with the over-hasty surrender of them to the king; and so by this unworthy shift, 'Incidit in Scyllam qui vult vitare Charybdis.' Forfeiting his head to the Parliament and Kingdom, to secure it from the King.

Mr. Prynne concluded his Reply to the Defence of the fourth Article, and those that followed it, with col. Fiennes's Commission for Bristol, and some precedents in point resolved in parliament; the transcripts whereof out of the parliament rolls, proved upon oath to be true copies, he there delivered to the council.

Col. Fiennes's Commission (the original whereof he there produced) was read as followeth:

'Robert Earl of Essex, &c. To Col. Nathaniel Fiennes. By virtue of an Ordinance of the Lords and Commons in Parliament, I do

\* See these Records at large, with some others to the same purpose, at the end of this Trial.

'constitute and appoint you Governor of the City of Bristol, as also Commander in Chief of all the forces raised, or to be raised and employed for the defence of the said City, and the liberties of the same, and of the garrison there, to serve for the defence of the King, Parliament, and Kingdom. These are therefore to will and require you by virtue of this Commission to take the said City and forces into your charge as Governor in Chief, and by all possible ways and means (except in point of civil government) to provide for the defence and security of the same, and to maintain the same against all enemies and opposition whatsoever: and from time to time diligently to exercise the said forces within the said City and liberties, in arms; commanding all officers and soldiers to obey you as their Governor and Commander in Chief, for the service above-mentioned, according to this Commission given you. And you are likewise to observe and follow such further order and direction as you shall receive from myself, or from both Houses of Parliament. Given under my hand and seal of arms this first day of May, 1643.—E.S.S.X.'

From this Commission it appears, 1st, That Col. Fiennes was constituted Governor of Bristol by Commission from his Excellency, under his hand and seal. 2dly, That he had the command in chief of all the forces and garrisons there, who were to be employed for the defence of the said City, and the liberties of the same; and to serve for the defence of the King, Parliament, and Kingdom. 3dly, That he was specially charged by that Commission, to take the said City and forces into his charge as Governor, and by all possible ways and means to provide for the defence and security of the same, and to maintain the same against all enemies and opposition whatsoever; and that all officers and soldiers were there to obey him as their Governor and Commander in Chief for this service: Therefore he and his officers were expressly enjoined by this Commission to defend and keep it against the enemy, to the uttermost extremity, and were there placed for that very purpose: and that he sent for and accepted this Commission upon these very terms, and not only to rule his soldiers, not to keep the Town and Castle, as he falsely at first pretended. 4thly, That he was to observe and follow such further order and direction from time to time, as he should receive from his Excellency and both Houses of Parliament; therefore not to surrender the City and Castle without their special order or direction, which he never had to do it, as himself confesseth. His very Commission therefore being expressly violated in all these particulars by this his Surrender, before he was reduced to utmost extremity, is a sufficient evidence to declare and condemn him for a traitor, by the very Ordinances of War, especially since he knew the grand importance of the place, for the kingdom's safety.

For precedents adjudged in point, I could produce many out of foreign histories, which

I shall pretermitt, because they are no binding evidence in law;\* wherefore I shall confine myself to such domestic examples of this nature, as have been formerly adjudged in parliament, (the supremest council of war, whose judgments must direct all others) registered amongst our parliamentary records, which cannot be controlled, and are the best evidence of any other. The Records themselves (examined by the Parliament Rolls) are long, and written in law French, which perchance some of this honourable council understand not; I shall therefore briefly open them in English, and apply them to the present case, in order as they are opened.

The first Precedent† is the case of John lord of Gomineys, who in the parl. of 1 R. 2, n. 38, 40, was indicted and arraigned before the Lords, 'For that he being made Governor of the Town and Castle of Arde, in France, by king Edward 3, to this intent, That he should safely keep the same for the king and his heirs, without surrendering them to any person without their command, did yet in king Richard 2's reign deliver and surrender the same to the king's enemies, without any command from him, to the dishonour and disheriting of the king and his crown, and of the realm of England, against his undertaking aforesaid, without any duress or default of victuals or artillery, or of any other things necessary for the defence thereof. To which Indictment the Defendant pleaded, that the Town and Castle were so weak, that he could not well keep them against so great a power of the enemies as was then ready to assail them: Whereupon he assembled all the knights, esquires, and others in the Town, and informed them of the dangers the Town was in, and of the enemies forces; and by common counsel and consent of them all, he entered into a treaty with the enemies, to save the lieges of the king within the Town and Castle; and thereupon yielded up the same upon terms of composition, receiving no reward at all for surrendering the Town or Castle. But because one Geoffrey of Argentine, knt. affirmed in parliament, that he was then in person within the said Town and Castle, in the defence whereof he was always ready to live and die, never consenting to the Surrender thereof; and because sir Ralph de Ferrers, knt. had valiantly defended them in former times against a great force of the enemy, when they were not so strong as at the time they were surrendered: And because de Gomineys had undertaken to keep them, and if he could not have done it, he ought in no wise to have undertaken to keep them; and that another should and would have undertaken the safe keeping of them, had he not undertaken it; and for that he yielded them up in this sort before utmost extremity, when he wanted neither men, nor victuals, nor ammunition; he was adjudged to lose his

\* See Grimston's History of the Netherlands, p. 827, 828. † 1 R. 2, num. 38, 40.

'head, notwithstanding his plea, that he did it  
'by the advice of a general Council of War, to  
'save the king's liege people's lives and estates,  
'and that the Town and Castle were weak,  
'unable to resist the enemy's power.'

This Town was of far less importance to the  
realm of England than Bristol; no treachery  
at all appeared in the Surrender, made by the  
vote of a general Council of War; yet we see  
the Governor, adjudged to lose his head, for  
not holding it out to the utmost extremity, ac-  
cording to his duty. And if his plea could not  
secure him from such a sentence, col. Fiennes's  
plea being the very same with his, that he sur-  
rendered the City and Castle of Bristol to the  
enemy before utmost extremity, because they  
were weak and untenable for any long time, to  
save the lives and estates of the garrison, and  
Parliament's friends, and that by the counsel  
and assent of all the knights, esquires, soldiers,  
and inhabitants thereof, must needs be frivo-  
lous, and can no way extenuate his fault, nor  
save his neck from the block; the rather be-  
cause Bristol was of far greater consequence to  
the kingdom now, and better provided, fortifi-  
ed, manned, victualled, and more likely to be  
relieved, than Arde was then.

The second Precedent was of Pierce de  
Cressingham, and John de Spikesworth, esqrs.,  
who were arrested and arraigned in parliament  
7 Rich. 2. n. 17, 'For yielding up the Castle  
'of Drinkham in Flanders to the enemies,  
'from whom it was gained by the bishop of  
'Norwich, though it were well and sufficiently  
'stored with victuals and other necessities,  
'and strong enough to be held against the ene-  
'mies, without the will or command of the  
'king or his lieutenant. To which Spikes-  
'worth pleaded, That he had never the custo-  
'dy of that Castle, or any thing to do there-  
'with, but was chased into it by the enemy, it  
'being then in the custody of Pierce de Cres-  
'singham: That soon after the enemy assault-  
'ing the barbican, he was unhappily routed,  
'and one of his varlets slain close by him:  
'That he had never any thing to do in the  
'Castle, neither as a soldier thereof, nor in  
'any other manner whatsoever, but only con-  
'tinued in it in manner aforesaid, till it was  
'surrendered by the said Pierce; and there-  
'fore prayed, that it would please the king to  
'have him excused. Whereupon it was or-  
'dered he should be set at liberty, if nothing  
'else could be said against him. Pierce Cres-  
'singham, who had the custody of the Castle,  
'alleged, That upon the yielding up of the  
'Town and Castle of Burburgh to the enemy,  
'of all the garrison-soldiers he had with him at  
'Drinkham, none would continue with him for  
'the safeguard of that Castle but only five per-  
'sons; by reason of which great necessity he  
'was constrained, for the safety of his own  
'person and people, to enter into a treaty with  
'the enemies to deliver up that fort; and  
'thereupon he yielded it up, and not for any  
'other cause, nor in any other manner, but  
'only by constraint of the power of the ene-

'mies aforesaid; denying that he ever receiv-  
'ed any thing from the enemies by way of  
'gift, or in any other manner: Whereupon he  
'conceived that no man ought to impute any  
'manner of blame or reproach unto his per-  
'son; but if it should be thought he had done  
'ill in any manner, he most humbly cast him-  
'self upon the grace of his liege lord. But be-  
'cause this excuse was held insufficient, he was  
'committed to prison, till the king should  
'otherwise declare his opinion concerning  
'him.'

Here was a case of far greater extremity  
than Bristol, without any apparent mixture of  
treachery; but only five of the garrison left to  
defend the Castle, whereas the Defendant had  
2,300 soldiers at least in Bristol; and a Sur-  
render by common advice for the Governor's  
and inhabitants' safety: yet because Cressing-  
ham the Governor, by virtue of his office, was  
bound to hold it till the utmost extremity, he  
was for the present adjudged to prison, and to  
expect a farther sentence afterwards; whereas  
Spikesworth was acquitted, because he came  
casually into the Castle, as forced by the ene-  
my, and had no charge of it, as a Governor, of-  
ficer, or garrison-soldier; all which, as appears  
by this resolution, are answerable and punish-  
able for delivering up the smallest fort before  
utmost extremity.

The third Precedent is the case of the bishop  
of Norwich, accused in parliament 7 R. 2. n.  
32, 'For surrendering the Town of Gravelin  
'to the enemy, before utmost extremity, upon  
'condition that it should be totally demolished.  
'To which the bishop pleaded, that by reason  
'of the disobedience of his captains, who  
'quitted the field, and betook themselves to  
'their forts, he was constrained to retire with  
'his forces to the Town of Gravelin, which he  
'would have held out well enough against all  
'men, and did hold out till the other captains  
'had surrendered their forts adjoining to the  
'French; and after that, until speedy supplies  
'might have arrived from England: But be-  
'cause there were 6 or 7,000 Englishmen, who  
'came out of the forts surrendered, lying on  
'the sands near Calais, who could not get into  
'the Town, and were in danger to be slain by  
'the French within two or three days, (the  
'truce being then expired) whose loss would  
'have been charged principally upon him;  
'thereupon he was commanded by the king  
'himself to render the town to the enemies, or  
'else to demolish it, and then to march to suc-  
'cour the said English, and after that towards  
'England, to save himself and others of his  
'army, in case they were in any great want of  
'victuals, as in truth they were: and because  
'it behoved him to abate and void the town,  
'as it was lawful for him to do at his pleasure,  
'being gained by his proper conquest from the  
'enemy; it seemed to him, that he ought to  
'be well excused of whatever was surmized  
'against him (for compounding with the French  
'to raze the Town to the ground, and to de-  
'part whither he would with his bag, baggage,

'and men\*'). To which was answered by the Lord Chancellor, That there was sufficient victuals in the Town when the king's letter came there; after which the king sent other victuals thither in great plenty, with letters importing, how he had appointed his uncle to come speedily to his aid and succour: yet notwithstanding he departed thence, leaving the Town to the enemies, against the form of his indenture, by which the king granted him whatsoever he should conquer, not at all to surrender, sell or leave the same to the enemy, but to hold and possess it. And as for the disobedience and defaults of his officers, and their surrender of the fortresses, they neither could nor ought at all to excuse him, seeing they were all named and chosen by himself, not by the king or his council, and the Articles of the Surrenders sealed between them and the enemies, were made without the authority and consent of the king: Wherefore by the assent of the earls, barons, and other lords temporal present in parliament, it was assented and decreed, That the bishop should be in the king's mercy (who out of his grace would forbear to lay hands on his body in regard of his function, though he might justly have proceeded against him as a layman;) that he should be put to a fine and ransom, according to the quantity and quality of his offence, for which his temporalities should be seized; and whatever monies he had received from the king, and employed to his own use, he should presently make full payment thereof into the king's treasury, without delay or difficulty.' Had he been a layman, his censure had proved capital, and more rigorous.

Here we have all col. Fiennes's excuses pleaded to justify this action: 1. The saving not of a body of 1,500, but 7,000 Englishmen to serve the state, whose lives were all endangered, not in a Garrison-Town or Castle well victualled, or ammunitioned, as those in Bristol were, but lying on the open sands without defence, and that not in their own native soil, but beyond the seas in an enemy's country. 2. Despair of timely relief, and greater want of victuals than was in Bristol, where there was too much plenty. 3. A letter from the king himself, enjoining the bishop to quit the Town to the enemy in case they wanted victuals, as he alledged they did; whereas col. Fiennes received no such letter from the Parliament or his Excellency, to quit or yield up Bristol. 4. This Town was won from the enemy by the bishop himself, not immediately committed to him to guard by the king or parliament, as Bristol was to the Defendant, who had less right to surrender Bristol, than this bishop Gravelin, being his own conquest. 5. He did not yield up the Town, with all the cannon, arms, and provisions in it, to the enemy, as the Defendant did Bristol; but only

demolished it and slighted the fortifications, departing thence with bag, baggage, cannon, and his men: yet notwithstanding all these particulars, and the gallant service this martial bishop had done in this expedition, he incurred this heavy censure, and had his temporalities seized divers years for his fine and ransom. And if he deserved such a censure, no doubt the Defendant deserves a far greater, notwithstanding his excuses.

The fourth Precedent is that of sir William de Elmham, sir John Tryvet, sir Henry de Ferrers, and sir William de Farendon, knights, and Robert Fitz-Ralph, esq., impeached in the parliament of 7 R. 2, (rot. par. n. 24,) 'for surrendering the Town and Castle of Burburgh to the enemy, and receiving monies for the arms, victuals, prisoners, and goods within the same. To the which sir Wm. de Elmham and most of the others pleaded, that they were enforced to surrender the Town and Castle to the enemy of fine force, for the salvation of themselves, the garrison and people therein; the enemy having besieged and assaulted it in very great numbers, and set the Town on fire within, who would have taken it by force, and taken or slain all those within it, had they not yielded it by agreement: And that the monies they received, was only for the prisoners, victuals, and other goods within the same, not for the surrendering of the Town itself. Yet notwithstanding, this excuse was adjudged insufficient, and the parties ordered to make full payment to the king of all the monies received from the enemy, to stand committed to prison, to make ransom at the king's will according to the quantity of their several offences; and sir William de Farendon left to the king's mercy, both for his body and goods, to do with them what he pleased.'

Here we have a Town assaulted by a multitude of enemies, fired in part, and thereupon a Surrender upon composition, to save the officers and soldiers from being taken or slain by the enemy; yea, a better market than the Defendant made at Bristol, even a sale of the prisoners, victuals, and goods in the Town to the enemy for money, when endangered to be all surprized by force; yet this was judged no excuse: Therefore certainly the Defendant's pretended necessity, and danger of forcing the Town by the enemy, not half so real as this, cannot excuse his crime, nor extenuate his guilt, nor yet his pretence of saving his officers and garrison's lives and estates, to do the parliament service elsewhere.

The fifth precedent is that famous case of William de Weston in the parliament of 1 R. 2, (num. 38, 39, 40.) 'The commons in this parliament prayed, that all those captains who had rendered or lost Castles or Towns through their default, might be put to answer it in this present parliament, and severely punished according to their deserts, by award of the lords and barons, to eschew the evil examples they had given to other governors of Towns and Castles. Whereupon John de Goumneys

\* Walsingham Hist. Ang. p. 327 to 330. Hollingshead, Speed, Grafton, in an. 6 Rich. 2.

'(whose case I began with) and William de Weston, then detained prisoners in the Tower, because they had lost and rendered the king's Towns and Castles to the enemies, were brought by the constable of the Tower before the lords, in full parliament in the White-chamber; where Weston, by the Lords' command, was arraigned by sir Richard Lescrop, steward of the king's house, in manner following :

'William de Weston, you took upon you from the most puissant prince (whom God assoil) sir Edward late king of England, grandfather to our lord the king that now is, safely to keep to him and his heirs, kings of England, the Castle of Outhrewyke, without surrendering it to any one but to the said grandfather, or to his said heirs, or by command from him, or from his said heirs : Have you, William, who are a liege-man of our lord the king, in times of the same our lord the king who now is, true heir to the said grandfather, delivered and surrendered the same to the enemies of our lord the king, without command from him, to the dishonour for damage, of him and his crown, of the estate of his realm of England, against your allegiance and undertaking aforesaid? What will ye say hereunto?"

Whereupon the said William put in his final answer in this behalf; 'To the most sage council of our lord the king, and to the other lords and commons of the parliament, supplicates and sheweth William de Weston, That albeit he be accused of this, that he hath maliciously rendered the Castle of Outhrewyke, of which he had the custody, by delivery and assignment of our lord the king; may it please your sage and just discretion to have the said William excused thereof, for these causes ensuing; First of all, may it please you to remember how that the said William was lately informed by a spy, that a great power of the enemies would come upon him to besiege the said Castle, with very great and very grievous ordnances; whereupon he the said William presently by his attorney, and by his letters, required of the said council that it would please them to re-inforce the said Castle with more men, for the defence and safe-guard thereof, in regard that the garrison of the said Castle that then was, were not half sufficient in respect of multitude to resist so great a force in so large a place; but in conclusion, for all this, he could not have any succour from the said council; And so the said William, not at all through his default, was left without people sufficient for to keep and defend the said Castle any long time; which he beseecheth you to take into your just and benign consideration. Also please you to know, how upon a Monday about one of the clock, the enemies came to besiege the said Castle, to the number of 2,600 men of arms, and 700 arblasters Genervoyes, and with 5,000 of the commonalty of the country, having nine great cannons, divers engines, and one great mortar-piece, beyond all measure greater than ever they had seen any

'before in those marches; and the same hour presently a great number of the men of arms and arblasters aforesaid came before the gates for to assail the said Castle, and at this time a knight of theirs was slain, who was cousin to the lord de Clifton as was reported, and many others were likewise then slain and wrecked. And within a short time after they began to shoot with their ordnances and other engines, and so continued their assault from one day to another, that is to say, Tuesday, Wednesday, Thursday; and then were the walls and houses of the Castle battered down, and bruised in many places; and they had likewise by force trencched the ditches of the said Castles in three places, so as the water was drained out; and that night came a great party of them, and by fine force made an assault, and abated the barricades; and the next day (which was Friday) they came about day-breaking with all their forces to assault the said Castle, but with God's assistance they were yet repulsed with force from their assault, and of the one part and the other were some slain and wounded. And the same day the marshal of Burgoyne sent to the said William, and others of the said Castle, to render it; whereupon having consideration that the said Castle could not be kept, as well in regard of the small number of the people, as by reason that the walls in many places were enfeebled by their marvellous ordnance, there was a treaty with the lords to this end: That the said William and his company might advise themselves against the next morning; and so they departed each to his own. Also this same night the enemies caused all their ordnances, engines, mortar-piece, cannons, and faggots, with scaling-ladders, galleries, and all other necessities, to be drawn up near to the very ditch of the aforesaid Castle, and the next day (which was Saturday) they made all things ready plainly for to assault the place: And then first of all sent an herald to the said William, to know if the said Castle should be rendered to them or not? Whereupon the said William, by advice of the wisest of his companions, taking consideration how that the said place was destroyed and enfeebled with their ordnance, and also that they were too few men for its defence, by reason that twelve of their companions were in this time slain, wounded and sick, so as there remained of all the people in the garrison in health, but only 38 men to defend the same; hereupon by common assent the said Castle (which could be kept no longer) was by force surrendered, for to save their lives granted to them, and their goods. And that all these things aforesaid are true, the said William put himself upon his proof, according to your most discreet ordnances. Also it is to be remembered, that when the said Castle was thus rendered as aforesaid, certain French people bargained with the said William, for his victuals, to buy them together with certain prisoners which the said William held imprisoned within the

'said Castle, for which things he received of  
'them for his payment 1,500 franks; of which  
'he paid his companions for part of their wages  
'which was behind unto them for one quarter  
'of a year and a half, 78 franks; likewise after  
'was paid at Calais for the victuals of the said  
'Castle before that time due 442 franks; also  
'for the passage of the said William and of his  
'companions into England, and likewise for  
'the expences of the said William being at  
'Calais, 135 franks. And therefore the said  
'William prayeth in this regard your justice  
'and benignity, seeing, by envious suggestion,  
'he hath against all reason been accused,  
'whereby his estate and name, by the grievous  
'sin of mis-informers, and he also, is ruined;  
'having likewise consideration, that out of his  
'proper goods he hath for the greater part paid  
'his companions their wages which were due  
'unto them as aforesaid, and also for the great  
'costs he hath been at before this time for to  
'victual the said Castle, (for which he hath  
'given his obligations in divers places, and  
'oweth great sums, by reason whereof he is on  
'all sides undone, if your just benignities do  
'not succour him) that you would be pleased  
'for God's sake, and for pity, to ordain like-  
'wise for him, that he may, by your discreet  
'nobleness, recover his estate and goods. Also  
'the said William Weston sheweth, how the first  
'day when the enemies came before Arde, that  
'he went in haste to Calais unto the captain,  
'and desired of him more succour and aid of  
'men, for the better guarding of his fort of  
'Outhrewyke, and to defend it if the enemy  
'should come thither: and the captain answer-  
'ed him briefly, that he would not deliver nor  
'give him aid nor succour at the same time,  
'because he doubted that the said enemies  
'would come before the town of Calais.—But  
'notwithstanding all these pleas, the lords in  
'this parliament, together with the most valiant  
'and discreet knights, and other members there-  
'of, after good and mature deliberation here-  
'upon, delivered their judgment and resolution  
'against Weston in form following: It seemeth  
'to the lords aforesaid, that you, William, who  
'had taken upon you safely to keep the Castle  
'of Outhrewyke, as before is said, that you  
'have without any duress or default of victuals  
'evilly delivered and surrendered the same to  
'the enemies of our lord the king, by your own  
'default, against all apparent right and reason,  
'and against your allegiance and undertaking  
'aforesaid: and having by due information read  
'the case of the late baron of Graystock, who  
'was a lord, and one of the peers of the realm,  
'who had taken upon him safely to keep for the  
'foresaid grandfather the town of Berwick; the  
'said baron perceiving afterwards that the said  
'grandfather addressed himself to go into the  
'realm of France, the said baron (without com-  
'mand of the said grandfather) committed the  
'said town of Berwick to a valiant esquire,  
'Robert de Ogle, as lieutenant to the said  
'baron, for to keep safe the said town of Ber-  
'wick to the said grandfather; and the said

'baron went as an horseman to the parts of  
'France to the said grandfather, and there re-  
'mained in his company; during which time  
'an assault of war was made upon the said  
'town of Berwick by the Scots; and the said  
'Robert, as lieutenant of the said baron,  
'valiantly defended the same; and at last by  
'such forcible assaults the said town was taken  
'upon the said Robert, and two of the sons of  
'the said Robert there slain in the defence of  
'the same. Notwithstanding because that the  
'said baron himself had taken upon him the  
'safeguard of the said town to the said grand-  
'father, and departed himself from thence with-  
'out command of the said grandfather, and the  
'said town of Berwick was lost in the absence  
'of the baron, he being in the company of the  
'said grandfather in the parts of France, as is  
'aforesaid; it was adjudged, by advice of the  
'said grandfather, the king of Castile, who is  
'present, the nobles, dukes, and counts, Henry  
'late duke of Lancaster, the late earl of  
'Northumberland and Strafford, and sir Walter  
'de Manny, that the said town was lost in de-  
'fault of the said baron: and for this cause he  
'had judgment of life and member, and that he  
'should forfeit all that he had: and to render  
'his judgment in these words, the said sir  
'Walter had a command from the said grand-  
'father. Which things considered, and this  
'also, that you, William, surrendered the cas-  
'tle of Outhrewyke to the enemies of our lord  
'the king aforesaid, without any duress or want  
'of victuals, against your allegiance and un-  
'dertaking aforesaid, the lords above-mention-  
'ed sitting here in full parliament adjudge you  
'to death, and that you shall be drawn and  
'hanged. But because that our lord the king  
'is not yet informed of the manner of this judg-  
'ment, the execution thereof shall be respited  
'until the king be informed thereof: Where-  
'upon it was commanded to the said constable  
'safely to keep the said William, until he had  
'other command from our lord the king.'

This case is very punctual, this judgment  
fatal to the defendant; wherein all his former  
pleas, and far better than he could make, are  
over-ruled against him long since, even in full  
parliament. (1.) This Weston, as soon as he  
heard of the enemy's approaches and intent to  
besiege Outhrewyke castle, sent post to the  
council, and to the governor of Calais, ac-  
quainting them with the weakness of the garri-  
son, and craving present aid, (as the Defendant  
pretended he sent to his excellency) yet could  
receive no supplies from either. (2.) His gar-  
rison was not half enough to resist the enemies  
great power, neither had he means to increase  
it; whereas Bristol garrison was abundantly  
sufficient to resist the enemy, and the Defend-  
ant might have doubled it, had he pleased,  
there being 6 or 8,000 able men more in the  
Town, whom he might have employed in its  
defence. (3.) There were 8,400 enemies be-  
fore it, as many or more than were before Bris-  
tol, and but 50 men only in the castle to de-  
fend it; whereas there were 2,000 foot and

300 horse at least to guard Bristol; a vast disproportion. (4.) They had nine great pieces of battery, a great ram, or mortar-piece, greater than ever were seen in those parts before, with many other engines, as many or more than the enemy had at Bristol. (5.) The siege, battery, and assault thereof, continued from Monday till Saturday; whereas Bristol was besieged only from Monday till Wednesday noon, not half so long, and then yielded upon parley. (6.) All the walls and houses of the castle were beaten down and battered exceedingly, and the ditches drained of the water by trenches, and all their barricadoes beaten down, yet they still held it out; whereas not one shot at all was so much as made against the Castle or walls of Bristol, but against the out-works only. (7.) After the walls and barricadoes were thus broken down, and the ditch drained, they manfully repulsed the enemy, who fiercely assaulted it, and slew divers of them, with the loss and wounding of some of the garrison; whereas Bristol Castle and the body of the Town were yielded up before the least battery, mine, or assault. (8.) They made all things ready for an assault, planting all their ordnance, engines, galleries and faggots close to the Castle ditch, and sent two several heralds and messengers to him for a Parley ere he would treat; whereas the Defendant, before any battery or assault against the City or Castle, sent out twice to the enemy for a Parley, with so much haste, that he would not hearken to any who would beat them out, or oppose or delay the treaty. (9.) Twelve of his 50 men were by this time slain, sick and wounded; so that he had only 38 left to make good the Castle, thus battered and assaulted with so great a power; whereas the Defendant lost but 8 men at most, and had at least 2,300 horse and foot when he fell to parley. (10.) He surrendered the Castle by the advice of a general Council of War, upon better grounds than the Defendant yielded up Bristol; to wit, because the walls were beaten down, the garrison over-small to defend it, the enemy very likely to force it by the assault, no present relief near at hand, and to save his own, with the soldiers lives and goods, which else were endangered to be lost; none of which the Defendant can justly alledge, as we have manifested. (11.) He made the most of an ill bargain, by selling the victuals and prisoners in it to the French for 1,500 franks, with which he paid his soldiers their arrears of wages, discharged the debts of the Castle owing for victuals, and defrayed the charges of their passage into England; whereas the Defendant yielded up all the prisoners and victuals to the enemy gratis, with which provisions the ships that brought over the Irish soldiers were victualled, and left the state to pay the soldiers arrears and other debts contracted by him there, amounting to many thousand pounds, which ought to be made good out of his own estate. Therefore, in these respects, he ought to undergo the self-same judgment of death, and to be drawn and hanged, much more justly than he.

To these Precedents colonel Fiennes answered, 1. That these governors had all of them Commissions under the great seal of England to keep these Towns and Castles, and that made their offence so great; but he had no such Commission under the Great Seal of England to be governor of Bristol: and this he conceived differed the cases much.

To which Mr. Pynn replied, (1.) That the Defendant was much mistaken in this point; for these Towns and Castles lying in France, if the commissions of their governorships were under any seal, it was under the great seal of France, not of England, as appears by the express statute of 14 Ed. 3, stat. 4, and 1 H. 6, rot. parl. num. 14, 15. (2.) That the great seal being carried from the parliament when his commission was granted, he could not expect any such commission under the great seal, but from the king himself in opposition to the parliament, to whom he surrendered Bristol, perchance for want of a commission under the great seal to keep it. (3.) If this were a good plea, or warrantable distinction, then all the governors of Towns and Castles within the parliament's power might treacherously or cowardly surrender them forthwith to the king without punishment or danger, because they wanted a commission under the great seal to keep them. (4.) He had a commission under his excellency's hand and seal to keep the City; under whose authority he took the custody of it for the parliament's and kingdom's safety, in these distracted times, by virtue of a commission of both houses granted to his excellency: therefore his offence is as great and capital for surrendering it contrary to his trust, and his excellency's commission to keep it, as if it had been under the great seal. (5.) When his commission was first granted, the parliament had not made a new great seal to seal it, but since his surrender of Bristol they had made one: and he durst assure the Defendant, had his courage and fidelity been such as to hold out Bristol till the new seal was made, he would have procured him a commission under it to keep Bristol, rather than he should have yielded it up cowardly to the enemy, for want of a commission under the great seal of England. But because he held it not till such commission might be obtained, he must be condemned for rendering it contrary to that commission, which he both sent for and received from his excellency under his seal of arms alone.

Col. Fiennes's second Answer was, That it appeared not in these records what other matters and proofs were produced against these persons, besides those mentioned in them; and therefore, for aught he knew, they might be condemned for something else besides what is alledged in these records; else the cases might seem very hard, and the sentences none of the justest.

To which Mr. Pynn replied, That the Defendant by this strange answer betrayed his extraordinary ignorance in matters of law and records, into which no depositions of witnesses

are wont to be inserted, but only the true state of the case itself, and the judgment given thereupon; and therefore to surmise they were condemned for any thing else than what is expressly mentioned in the records and judgments themselves, is to aver against the very records, and the judges that gave the sentences, and so to falsify and nullify all records. The cases therefore being admitted to be really such as the records relate, in nature of a demurrer or confession, and the judgments determining them to be such: this answer must rather be deemed an ignorant mistake than any solid reply.

Col. Fiennes's third Answer was, That the Castles of Outhrewyke, Arde and Burburgh, were places of no great consequence or wealth, and therefore ought to be held out to the utmost: but Bristol being one of the richest, chiefest cities in the realm, and of great importance, ought not to be endangered or ruined by holding it to the utmost extremity, as castles and other such places of less concernment might be.

To which Mr. Prynn answered, (1.) That if places of smallest concernment ought to hold out to extremity, and if it be death to yield them up before; then certainly Bristol, and places of greatest consequence to the ruin or safety of the realm, ought much more to be kept to extremity, and the yielding of them up must be more capital; else he that betrayeth the greatest trust, and doth most mischief to the state, shall be less culpable, and undergo a milder censure, than he that betrays the smallest fort: yea, if this were either good justice, law or logic, the Defendant might argue, that he who steals 10,000*l.*, or murders a man, deserves not death; but he who steals 13*½d.*, or strikes a man, ought to be hanged without pity. The precedent and argument thereof held a *minori ad majus*: If these were condemned for their cowardly surrendering of those inconsiderable Towns and Castles before utmost extremity, which did but little prejudice to the republic; then much more ought the Defendant to lose his head for yielding Bristol thus, a place of highest concernment to the kingdom, which is almost lost in and by its loss. And doubtless the Defendant, who would not adventure his life to preserve such a considerable City as Bristol to the utmost exigence, would never adventure it to hold out any other inferior places till the last, but yield them up without resistance. Since therefore it appeared by these precedents, that the parties impeached for surrendering up any forts were always detained under custody during their trial; he desired the council the second time, that col. Fiennes might presently be put under safe custody, and judgment given against him according to these precedents and the laws of war; the rather because they were seconded by his own late judgment against Yeomans and Butcher, whom he condemned and executed, by martial law, only for endeavouring to deliver up Bristol to the enemy before it was fully fortified, whereas

himself thus cowardly and traiterously surrendered it to them after it was fortified, and abundantly furnished with all necessaries to hold out a siege; their intentional surrender being not so criminal or fatal to the republic as his actual.

When we had thus made good the several Articles of our Charge, and fixed the Loss of Bristol and the West too on col. Fiennes, who by his not denying it, in his Answer to the fourth Article, did thereby in point of law confess it; the Colonel, to free himself from this heavy charge, averred before the Council, That Bristol and the West were not lost by him, but sir William Waller: to prove this he produced several allegations. Upon which Mr. Prynn humbly moved the Council, that a gentleman of his worth and honour might not be thus publicly traduced, where he was neither present to make his defence, nor a party to the Articles; desiring that either he might substantially prove this palpable slander by pregnant evidences, or else be exemplarily punished for it.

Hereupon the Defendant first alledged, that he sent sir William Waller twelve hundred foot out of Bristol (to wit, col. Popham's whole regiment) very well armed, who at the rout of sir William near the Devises lost all their arms (not many of these men returning to Bristol, and those without arms); the loss of which regiment so weakened the garrison, that it lost both Bristol and the West, which he could not defend for want of men.

To which Mr. Prynn answered, (1.) That Bristol was not lost for want of men; and that this regiment was fully made up and supplied, by the Defendant's own confession, with a great over-plus; sir William Waller not receiving above seven or eight hundred foot out of Bristol, in lieu whereof the Defendant raised 1,100 or 1,000 at the least, besides those from Malmesbury. (2.) That when he sent forth that regiment he had an independent commission, and could not be enforced to it, nor ought to have sent them, if the City were thereby endangered, without special command from the Parliament or his Excellency: His sending out, then, of this regiment being his own voluntary act, (as his own letter to col. Popham attests, and he confessed) it is clear that himself only was the loss both of Bristol and the West: and if there were no other evidence, this alone would endanger his head; it being capital by all laws of war for any governor to send out his garrison, or to absent himself from his charge, without special command, if the place be by this means lost or surprized, as was adjudged in Parliament in the case of the baron of Greystock, cited in Weston's case; of the earl of Northumberland\*, Henry Percy, in 7 R. 3, and others. Upon which ground we find the governor of Calais refused to part with any of his garrison for the defence of Outhrewyke castle: And the reason is apparent, because if gover-

\* Walsing. Hist. Angl. p. 337. See 56 E. 3. n. 23.

nors might draw out their garrisons, or desert their charges at their pleasure, their forts might be easily surprized, betrayed, and a gap opened to infinite treacheries.

2. He produced his cousin capt. Temple to testify, that a gentlewoman of his acquaintance, and of kin to col. Fiennes, overtook another gentlewoman upon the highway, newly come from Oxford; of whom asking what news, she answered, that the greatest news now at Oxford was, that though sir William Waller had occasioned the loss of Bristol and the West, yet col. Fiennes was like to suffer for it, and become his sacrifice; who being the great Diana of the people, and so necessary a man to the Parliament, now in the field with an army, they would forbear to question him, and sacrifice col. Fiennes to humour him and his party.

To which Mr. Prynne answered, (1.) That this extravagant report, testified only at the third or fourth hand, was no evidence at all, and savoured rather of a direct plot to traduce sir William Waller than to justify col. Fiennes. (2.) That all the western gentlemen had a quite contrary opinion of this business, that Bristol and the West were lost by the Defendant, not by sir William, as appeared both by their extraordinary respects unto him, and present employment of him to regain the West. (3.) Admit this fabulous report to be bruited in Oxford, (to asperse sir William and the Parliament, and justify the Defendant) yet it signified no more, but that col. Fiennes had better friends and respect at Oxford than sir William Waller, perchance for his good service in surrendering up Bristol to them at so easy a rate in so short a time (enough to purchase him both friends and favour at the court;) where sir William was not so grateful, because he never did them so great a courtesy, or good piece of service, nor the republic so grand a mischief.

3. Col. Fiennes, for a conclusion of his Defence, informed the Council, 'That this trouble, prosecution, and disgrace had never befallen him, but for that constant affection and service which he and his family had always shewed to his Excellency and his army, for which sir William Waller and his party did malign him.'

To which Mr. Prynne replied, That this was a most false, scandalous and seditious speech, discovering who they were that raised and fomented the late unhappy differences between his Excellency and sir William, and to what sinister end; that nothing could be uttered more effectual to set all the Parliament's several armies into a faction against one another, instead of joining against the public enemy; and therefore having neither the least ground nor proof to justify this calumny, he desired he might be exemplarily proceeded against for it.

In fine, after some hear-say Proofs, what opinion the enemies had of his valorous defence of Bristol, and the intennability thereof, and a recapitulation of all the heads of his Defence, he concluded with this peroration:

'My lords, I have at last ended my Defence,

'and (as I hope) sufficiently cleared both my honour, valour, and fidelity to the state in the defence of Bristol: And now I beseech you to consider, whose honour or life can be in safety, if lawyers (see'd by their own malice) may sift and turn up all his actions, and snail at his words; if such who are no soldiers may, upon the information of attorneys, and testimony of shop-keepers, ale-wives, enemies, but of no soldiers at all, (except such who appear out of particular spleen) be brought thus upon the stage for their lives, and the great privileges of Parliament broken by such an impeachment of a member of it, which could not be paralleled but by that accusation of the Five Members. Wherefore I desire, that as I have served my country faithfully, and done many good services for it, so I may by this honourable council be justified in my faithfulness, and repaired against the prosecutors in my honour, more dear unto me than my life; that so after all my public services, I may not now be cast behind the door like a disclout, unfit for any further employment.'

To which Mr. Prynne replied, (1.) That he wondered much why the defendant should thus except against him as an unfitting prosecutor, since himself (without his privacy or desire) had by a proclamation under his excellency's hand and seal, posted up at Westminster and the Exchange, selected him and Mr. Walker by name to prosecute this business against him: if then we were unmeet prosecutors, it was his own, not our error, and he must blame only his own judgment in the choice, not us. (2.) That though he were but a common lawyer, yet he deemed one of that profession a very fit prosecutor of him who had betrayed his trust, and in it the kingdom, contrary to law: and whereas the defendant scandalously objected, that he was see'd by his own private malice, he protested that there was never any malice, nor cause thereof between them; that he formerly honoured the defendant for his pen, but never for his sword, and bestowed some courtesies on, though he never received any from him; that he was born not far from Bristol, bred up some years therein, had many friends and kindred in or near it, who lost much, and himself not a little, by its surrender; that nothing had engaged him in this prosecution but the defendant's own summonings, nor see'd him but the public service of the parliament, and security of the realm: and although he had lost and suffered much for the church and state, yet he never received nor expected the least recompence, much less reward from either, nor ever had any pay for public services; whereas the defendant received good wages for all his services, and for losing Bristol too: that himself had never lost any thing of the state's, as he had done, but only what was his own, (his liberty, calling, estate, members) and that only for doing the church and kingdom service; none of all which the defendant had parted with for the public. And therefore whereas the defendant boasts of his public actions, he could

without vanity or prejudice truly affirm, he had done ten times more service for church and state, and suffered a thousand-fold more for both, not only gratis, but even with the loss of all his earthly comforts, than this boaster had done upon pay; and that he doubted not, through God's assistance, he should be able to do the church and state as good or better service for the future as he: wherefore he had little reason to extol himself so much, or depress him so low, as not to be a fitting prosecutor of such an unworthy action. That though he were no professed soldier, yet he doubted not but he had read as many or more treatises of military affairs than himself; that he had for eight years space, of his restraint in the Tower of London and Mount-Orgueil castle, conversed with old soldiers (and by name with sir William Balfour for five years in the Tower); from whom he gained so much experience in martial affairs, as he would have undertaken to have kept the City and Castle of Bristol till this day, had he been governor there as the defendant was, notwithstanding their pretended intenablety, and the enemy's power: that in the managing of this very business before this honourable council, he had in sundry particulars manifested himself, if not a better, yet at least as good a soldier as the defendant, for which he appealed to the council) and in regard of his long suffering and restraint in castles, was the antienter soldier of the two: that the defendant had confessed to the lieutenant-colonels Paleologus and Andrews, when he first undertook the government of Bristol, 'That he was no soldier;' and his yielding it up in a short time, before extremity, upon such poor conditions, manifested him in truth to be no man at arms; and therefore though he were no professed soldier, yet why he should not be a soldier sufficient to prosecute him, who, by his own confession and action, is no real soldier, he could yet discern no reason. For his witnesses, whom he here vilified and traduced, they were many of them persons of quality and honour, some of them members of parliament; others more expert soldiers, and persons better versed in martial affairs, than any of the defendant's witnesses; all of them persons of good fame and conversation, disinterested and disengaged in the cause, against whom no exceptions can be taken: when all his material witnesses were his own officers, brother, kinsmen, servants, creditors, and parties in the cause, most of them involved with him in the self-same guilt. That his life and honour were now drawn in question only by himself, upon his own motion and engagement of us; and if he lost them (as he lost Bristol), he might thank himself for interesting us in this public service, for our country's honour and future security, the only thing we aimed at in this present prosecution. That his pretended breach of privilege of parliament was but a fancy, already answered and over-ruled in the commons house, who referred him to a trial before a council of war, by two several

orders, upon his own motion and pretended voluntary waving of his privilege, before any impeachment put in against him; which impeachment was first tendered to the house of commons; who, upon the reading of it, with one unanimous vote referred it to his excellency, to be proceeded on by a free and fair hearing before this honourable council: and if the proceedings on this impeachment upon his own motion, by the commons direction, be a breach of privilege, it is only in himself and the parliament, not in us; and it hath no more resemblance to the case of the Five Members, than an ape to a lion. That he was now questioned, not for his faithful but unfaithful service to the republic and parliament, in the surrender of Bristol, in which he presumed he durst not manifest himself so far a papist as to plead a justification by works, or absolution by preceding merits. That he needed not to crave reparation of his honour and reputation from us or any other in this case, since they were both impaired and ruined by himself through this ignoble action: that he had given the whole kingdom an incurable fatal wound, and irreparable loss, (which the loss of his head and estate could no way recompence) by this surrender, for which in the whole kingdom's behalf we here demand judgment against him according to the quality of his offence: that our services for the republic were every way equivalent to, if not transcending his; our credits, our reputations, as dear to us as his to him, which he hoped should no ways suffer for our zeal and fidelity in this public prosecution upon our own expences, without thought of recompence. That if the defendant should be pronounced guiltless by this honourable council, after so full a charge and hearing, he was obliged to us for bringing him to such a public vindication of his suspected fidelity, which else would have lain eclipsed under a black cloud of jealousies: but if he were pronounced guilty of the impeachment, (as we made no doubt he would, the evidence being so clear, the proofs and precedents in point so punctual) we should deserve thanks, if not from him, (who pretended a desire to be tried to the uttermost) yet at least from the parliament, kingdom, and our native country, for bringing such a grand, politic, daring delinquent to his trial and condign judgment; who by surrendering Bristol hath endangered the loss of three whole kingdoms, and of our laws, religion, liberties, lives, and present parliament.

And now (my honoured lords and gentlemen) lest we should incur your just censure (according to the defendant's doctrine) for stouting out this cause over-long, which, by the defendant's tediousness hath lasted nine days dispute, (though the city's siege continued not three full days) we shall close up all in a word or two: we render you many hearty thanks, in our own and the kingdom's names, for your nine days pains, patience, and that fair, honourable, impartial hearing you have afforded both parties in the trial of this great public

cause, in which the whole realm is interested, and whereon their eyes are fixed; not doubting but as you have granted us a most full, fair, indifferent hearing, so you will in due season, after serious perusal of your notes and the evidence on both sides, give such a just and equal sentence as shall chronicle your justice to, and make this case a leading precedent for, all future times, to deter all governors of towns or castles from cowardly, traitorly, or unworthy surrenders of them.

Thus ended the long debate of this great cause, begun on Thursday the 14th of December 1643, and concluded on Saturday the 23d of December. After which both parties were ordered to attend the council again on Friday following, being the 29th of December, to hear sentence, the council desiring so much respite to peruse their notes, and prepare their judgment. Who sitting again, and we attending them, on the designed day, the council first delivered their several judgments of the cause among themselves in private; after which col. Fiennes was disarmed at the council-chamber-door, (whereat he was much appalled) and then he and we being called in, the Judge Advocate read his Sentence out of a paper in *hac verba* :

'Colonel Nathanael Fiennes, you have been arraigned and convicted before this honourable Council, for surrendering and delivering up the Town and Castle of Bristol, with the forts, magazines, arms, ammunition, victuals, and other things thereunto belonging, and for not having held the same to the utmost extremity, according as by your duty you ought to have done: for which offence this honourable council hath adjudged you to be exe-

cuted according to the tenor of the Articles of War, by having your head cut off. God have mercy on your soul.'

The Defendant, astonished at this Sentence, told the council, that he little expected such a Sentence from them; and demanded upon what grounds and reasons they thus condemned him? and whether they did allow of our paper-witnesses, or disallow the testimonies of his officers? Whereupon all being commanded to withdraw for a short space, and then called in again, the Defendant was told, 'it was against the style and honour of the Council, to be demanded the reasons of their Judgment after 'it was once pronounced.' Upon this the Defendant alleged, that he was a parliament-man, and claimed his privilege; that he ought not to be condemned without the privy of the Commons House, to which he appealed against this Sentence, and desired his Appeal might be entered.

To which Mr. Prynne answered, That he had formerly appealed from the parliament (the antient proper judge of his cause) to a council of war, and by his own voluntary motion waves his privilege to put himself upon this trial, as appeared by two orders of the house; therefore he could not now appeal back again to the house, or resume or claim his waved privilege after judgment. Notwithstanding, upon his request, his Appeal was entered; yet guard was set upon his person at his lodging; and upon better consideration he sent to withdraw his Appeal that night.

He was afterwards pardoned by the Lord General.

## CASES OF COWARDICE,

*Referred to in the foregoing TRIAL, as stated from the Records by Mr. Prynne.*

BY the laws\* of king Edward the Confessor, he who flieth from his lord or fellow-soldier for fear of war, or death, in the conduct of the heretock (or captain) in any expedition by sea or land, let him lose all that is his, and his very life, and the lord may lay hands on the land which he had formerly given to him. And he who shall be slain in war before his lord, be it in the land or elsewhere, let his reliefs be pardoned, and his heirs enjoy his money and land without any diminution, and divide it among themselves.

By the Statutes of 18 Hen. 6, c. 19. 7 Hen. 7, c. 1. 3 Hen. 8, c. 5. 2 Edw. 6, c. 2. 4 & 5 Phil. & Mary, c. 2. 3. 5 Eliz. c. 15, it is made no less than felony and death for any soldiers to depart from their captains without their licence under hand; for which many soldiers have been condemned and executed. Coke's 6 Rep. f. 27, in the Case of Soldiers:

And before these Statutes, Thomas earl of Lancaster was proclaimed† a traitor by the whole army, in the 12th year of king Edw. 2, for departing in discontent from the army at the siege of Berwick, by means whereof it was not taken, and the siege raised.

### Henry de Essex's Case, 2 Hen. 2.

Henry de Essex, † standard-bearer to the kings of England by right of inheritance, was accused of high treason in the 2nd year of king Henry 2, by Robert de Montford his near kinsman, and vanquished by him in a duel at Reading for his cowardly abandoning and throwing down the standard-royal in North-Wales, in the battle against prince Owen, amidst the mountains, and flying when fiercely

† Walsingham's Hist. p. 89. Holingshed, Grafton, Stow, Speed, Trussel, in 12 R. 2.

† Dan. p. 18. Speed, p. 502. Holin. and Stow, an. 2 H. 2.

\* Lambard. Arch. fol. 1, 5, De Heretochiis.

assaulted by the Welsh, whereby the king's army was endangered to be routed: whereupon though his life was pardoned, yet his lands were seized into the king's hand, and he shorn and shut up a monk in the abbey of Reading, where he died.

*Thomas Katrington's Case, 50 Ed. 3.*

Sir John Anneely, <sup>\*</sup>knt. in the parliament of 50 Ed. 3, (commonly styled, The Good Parliament) had accused Thomas Katrington, esq. of treason for selling and delivering up the Castle of St. Saviour's (built by the lord John Chaundois within the isle of Constantine) to the French, for an inestimable sum of money, when as he wanted neither means of defence, nor victuals: which castle, had it not been thus traiterously alienated, had descended to the said sir John in right of his wife, being next heir to the lord Chaundois, offering to make good this accusation, and try it out by duel: whereupon the said Thomas Katrington was then apprehended and imprisoned; but soon after, by means of the duke of Lancaster and the lord Latimer, who then did what they pleased, released, being formerly their instrument and creature in peace and war, in all just and unjust, in true and false things; neither could the said sir John obtain the effect of his suit till the parliament of 3 R. 2, A. D. 1380, some men affirming, That it was against the laws of the realm for any man of the realm to fight such a duel for such a cause; many who feared the like tax and accusation did most of all hinder this trial: but at last, in this parliament, the antientest and truth-speaking knights of the realm being assembled, it was resolved, that for a foreign cause, such as the present was, which arose not within the limits of the kingdom, and for the possession of transmarine things, it was lawful for any man to fight a duel, if the cause were before certified to the constable and marshal of the realm, and the duel accepted by the parties in their presence. Whereupon a day of battle, and lists, were appointed them in the court at Westminster, where this duel being solemnly fought on the 7th of June between these two champions, in the presence of the king, nobles, and an infinite multitude of people; the traitorous esquire was vanquished by the knight, to the joy of the common people, and to the grief of traitors: The esquire, who fainted in the place, died the next morning.

*Gomeney's and Weston's Case, 1 Ric. 2.*

In the parliament rolls of 1 R. 2, num. 38, 39, 40. The record is thus: Item, 'Whereas it was prayed by the commons, that all those who have rendered or lost castles or towns through the very default of the captains, might be put to answer it to this parliament, and severely punished according to their desert, by Award of the lords and baronage, to eschew the evil examples which they have given to others who are governors of towns

and castles, it was commanded to sir Alexander de Buxhall, constable of the Tower of London, that he should cause to come before the lords in parliament at Westminster, on Friday the 27th of November, in the year aforesaid, sir John de Gomeney and William de Weston, apprehended and detained in the said Tower by the command of our lord the king, because they had lost and rendered castles and towns to the enemies of our lord the king, to answer thereunto, upon the articles which shall be surmised against them for the said cause, on the behalf of our lord the king. Upon which day of Friday the said John and William, being brought by the said constable before the lords aforesaid in full parliament, sitting in the White-Chamber, they were severally arraigned at the commandment of the said lords, by sir Richard Leescrop, kt. steward of the house of our lord the king, in manner as ensueth:

'William de Weston, you took upon you from the most puissant prince, whom God assol, sir Edward late king of England, grandfather of our lord the king that now is, safely to keep to him and his heirs, kings of England, the castle of Outhrewyke, without surrendering it to any one but to the said grandfather, or to his said heirs, or by command from him or from his said heirs: Have you, William, who are a liege-man of our lord the king, in times of the same our lord the king who now is, true heir to the said grandfather, delivered and surrendered the same to the enemies of our lord the king, without command from him, to the dishonour, or damage, of him and his crown, and of the estate of his realm of England, against your allegiance and undertaking aforesaid? What will you say hereunto?

'Whereupon the said William said, that he had put his answers in writing, and produced before them a schedule containing many things comprised within the same, and came and read the said schedule in full parliament. Whereupon it was demanded of him by the said steward, if he presented before them this schedule for a final answer in this behalf, or not? And hereupon the said William prayed that this schedule might be re-delivered to him, and that he might put in his final answer; which schedule, for the cause aforesaid, was re-delivered to him; and after the said William delivered the said schedule, with an addition put thereunto in full parliament for his final answer in this behalf; the tenor of which schedule is such as followeth: To the most sage council of our lord the king, and to the other lords and commons of the parliament, supplicates and sheweth William de Weston, That albeit he be accused of this, that he hath maliciously rendered the castle of Outhrewyke, of which he had the custody by delivery and assignment of our lord the king; may it please your sage and just discretion to have the said William excused thereof, for these causes ensuing: First of all, may it

<sup>\*</sup> Walsing. Hist. Ang. p. 246 to 248.

‘please you to remember, how that the said William was lately informed by a spy, that a great power of the enemies would come upon him to besiege the said Castle, with very great and very grievous ordnances; whereupon he the said William presently by his attorney and by his letters, required of the said council, that it would please them to reinforce the said Castle, with more men for the defence and safeguard thereof, in regard that the garrison of the said Castle that then was, were not half sufficient in respect of multitude to resist so great a force in so large a place; but in conclusion for all this, he could not have any succour from the said council. And so the said William, not at all through his default, was left without people sufficient for to keep and defend the said Castle any longer time, which he beseecheth you to take into your just and benign consideration. Also, please you to know, how upon a Monday about 1 of the clock the enemy came to besiege the said Castle, to the number of about 2,600 men of arms, and 700 Arblasters Genevoys, and with 5,000 of the commonalty of the country, having 9 great cannons, divers engines, and one mortar-piece, beyond all measure greater than ever they had seen any before in those marches; and the same hour presently a great number of the men of arms, and arblasters aforesaid, came before the gates for to assail the said Castle; and at this time a knight of theirs was slain, who was cousin to the lord de Clisson as was reported, and many others were likewise then slain and wrecked; and within a short time after they began to discharge and shoot with their ordnances, and other engines, and so continued their assault from one day to another, that is to say, Tuesday, Wednesday, and Thursday, and then were the walls and houses of the Castle battered down and bruised in many places; and they had likewise by force trenched the ditches of the said Castle in three places, so as all the water was drained out: and that night came a great party of them, and by fine force made an assault and abated the barricadoes; and the next day, which was Friday, they came about day-breaking with all their forces to assault the said Castle; but with God’s assistance they were yet repulsed with force from their assault, and of the one part and other there were some slain and wounded. And the same day the mareschal of Burgoyne sent to the said William and others of the said Castle to render it, whereupon having consideration that the said Castle could not be kept, as well in regard of the small number of the people, as by reason that the walls in many places were enfeebled by their marvellous ordnances, there was a treaty with the lords to this end, that the said William and his companions might advise themselves against the next morning; and so they departed each to their own.’ Also this same night the enemies caused all their ordnances, engines, mortar-piece, cannons, and faggots, with scaling lad-

ders, galleries, and all other necessities, to be drawn up near to the very ditch of the aforesaid Castle; and the next day, which was Saturday, they made all things ready plainly for to assault the place; and then first of all they sent an herald to the said William, to know if the said Castle should be rendered to them or not? Whereupon the said William by advice of the wisest of his companions, taking consideration how that the said place was destroyed and enfeebled with their ordnances, and also that they were too few men for its defence, by reason that 12 of their companions were in this time slain, wounded, and sick, so as there remained of all the people of the garrison in health but only 38 men to defend the same: Hereupon by common assent the said Castle, which could be kept no longer, was by force surrendered for to save their lives granted to them, and their goods. And that all these things aforesaid are true, the said William puts himself upon his proof, according to your discret ordnances. Also it is to be remembered, that when the said Castle was thus rendered as aforesaid certain French people bargained with the said William for his victuals to buy them, together with certain prisoners which the said William held imprisoned within the said Castle, for which things he received of them for his payment 1,500 franks; of which he paid to his companions for part of their wages which was behind unto them for one quarter of a year and a half 78 franks; likewise after was paid at Calais for the victuals of the said Castle before that time due, 442 franks; also for the passages of the said William and of his companions unto England, and likewise for the expences of the said William being at Calais, 135 franks: And therefore the said William prayeth, in this regard, your justice and benignity, seeing by envious suggestion he hath against all reason been accused, whereby his estate and name, by the grievous sin of misinformers, and he also are ruined; having likewise consideration that out of his proper goods he hath for the greater part paid his companions their wages which were due unto them as aforesaid, and also for the great costs he hath been at before this time for to victual the said Castle, (for which he hath given his obligations in divers places, and oweth great sums, by reason whereof he is on all sides undone, if your just benignity does not succour him; that you would be pleased for God’s sake, and for pity, to ordain likewise for him, that he may, by your discret nobleness, recover his estate and goods. Also the said William Weston sheweth how, the first day when the enemies came before Arde, that he went in haste to Calais unto the captain, and desired of him more succour and aid of men for the better guarding of his fort of Outhrewyke, and to defend it if the enemies should come thither. And the captain answered him briefly, That he would not deliver, nor give him aid nor succour at the said time, because he doubted that the said enemies would come before the town of Calais. And the

same schedule being viewed and read in full parliament, immediately after was the said John brought thither by the said Steward in the manner following:

'John lord of Gomeney, you took upon you to the most puissant prince, whom God assoil, sir Edward late king of England, grandfather to our lord the king that now is, safely to keep to him and his heirs, kings of England, the town and castle of Arde, without surrendering the same to any person, except to the said grandfather and his heirs, or by commandment of him or of his heirs. These have you, lord of Gomeney, in time of our lord the king that now is, true heir to the said grandfather, delivered and surrendered to the enemies of our lord the king without commandment from him, to the dishonour of him and of his crown, and of the estate of the realm of England, against your undertaking aforesaid: What will you say thereunto? Whereupon the said John answered, That the said town and castle of Arde were so weak, that he could not well keep them against so great a power of the enemy's, which was then ready to assail the same town and castle; and therefore he caused to assemble all the knights, esquires, and others, being in the said town, and informed them of the perils of the said town, and force of the said enemies; and by common counsel and assent of the said knights, esquires, and others, he issued out to the enemies to treat with them for to save the lieges of our lord the king, being within the said town and castle of Arde; without that, that he ever took any thing for to surrender the said town and castle of Arde. Upon which one Geoffry of Argenton, knt. said in full parliament to the said John, that he the said Geoffry was at that time in the said town in company of the said John, and that the town and castle of Arde were never delivered nor surrendered by his counsel nor assent, but that he was always ready to die and live upon the safeguard of the same; and the said Geoffry offered to prove it, if any would deny it. And further, it was demanded of the said John, if he would say any thing else? And he said he would not. Whereupon the said constable was charged with the safe custody of the said John and William until the next day, the Saturday next ensuing, and to bring them again safe before the said lords in the said parliament, at the place and day aforesaid. At which day of Saturday, that is to say, on the 20th day of November in the year aforesaid, it was shewed unto them severally by the said steward on the same day, by the commandment of the lords aforesaid, how upon the answers that the said John and William had given in the said parliament, as before is said, the lords of the said parliament, that is to say, the king of Castile and of Leon, and duke of Lancaster, Edmund earl of Cambridge, Edmund earl of March, Richard earl of Arundel, Thomas earl of Warwick, Hugh earl of Stafford, William earl of

Suffolk, Wm. earl of Salisbury, Henry earl of Northumberland, John lord Nevil, Roger lord Clifford, and many other lords, barons, and bannerets being in the said parliament, who had assembled and advised together from the time that the said answers were given in parliament the Friday, until this Saturday at three of the clock, of things touching the answers aforesaid, and came and examined diligently the said answers and other articles touching those matters, and taking thereupon good and mature deliberation, and due information of the most valiant and most discreet knights, and others, being in the said parliament, it was thus said: First of all, in manner as followeth, to the said William by the Steward, reciting the things aforesaid touching the said William: It seemeth to the lords aforesaid, that you, William, who had taken upon you safely to keep the castle of Outhrewyke, as before is said, that you, William, have without any duress or default of victuals, evilly delivered and surrendered the same to the enemies of our lord the king by your own default, against all apparent right and reason, and against your allegiance and undertaking aforesaid: and having by due information read the case of the late baron of Graystock, who was a lord, and one of the peers of the realm, who had taken upon him safely to keep to the aforesaid grandfather the town of Berwick; the said baron perceiving afterward, that the said grandfather addressed himself to ride into the realm of France, the said baron (without command of the said grandfather) committed the said town of Berwick to a valiant esquire, Robert de Ogle, as lieutenant of the said baron, for to keep safe the said town of Berwick to the said grandfather, and the said baron went as an horseman to the said parts of France to the said grandfather, and there remained in his company. During which time, an assault of war was made upon the said town of Berwick by the said Scots, and the said Robert, as lieutenant to the said baron, valiantly defended the same; and at last by such forcible assaults the said town was taken upon the said Robert, and two of the sons of the said Robert there slain in the defence of the same. Notwithstanding, because that the said baron himself had taken upon him the safeguard of the said town to the said grandfather, and departed himself from thence without command of the said grandfather, and the said town of Berwick was lost in the absence of the baron, he being in the company of the said grandfather in the parts of France, as is aforesaid: It was adjudged by advice of the said grandfather, the king of Castile, who is present, the nobles, dukes, and counts, whom God assoil, Henry late duke of Lancaster, the late earls of Northampton and Safford, and sir Walter de Manny, that the said town was lost in default of the said baron; and for this cause he had judgment of life and member, and that he should forfeit all that he had:

and to render this judgment in these words, the said sir Walter had a command from the said grandfather. Which things considered, and this also, that you, William, surrendered the said castle of Outhrewyke to the enemies of our lord the king aforesaid, without any duress or want of victuals, against your allegiance and undertaking aforesaid, the lords above-named sitting in parliament, adjudge you to death, and that you shall be drawn and hanged: but because that our lord the king is not yet informed of the manner of this judgment, the execution thereof shall be respited until the king be informed thereof. Whereupon it was commanded to the said constable safely to keep the said William, until he had other command from our lord the king. And as to the said John lord of Gumeney, touching his answers aforesaid, it was shewed unto him by the said Steward, how the said lords had assembled and considered of the said answers as afore is said; and moreover it was shewed to him, how that in the time that sir Ralph de Fevers, knight, had the custody of the said town and castle of Arde, the said town of Arde was not half so strong as it was at the time the said John surrendered the same; and the said Ralph had a command from the said grandfather to surrender the same for the feebleness thereof, before that the said Ralph would put himself into very great peril for safeguard thereof; notwithstanding the said Ralph valiantly defended and maintained the same against a very great and strong assault of war. And thereupon, and the things aforesaid, and other evidences touching the answers of the said John in this behalf; it was said in manner as followeth to the said John, being in parliament, by the said Steward, reciting all things aforesaid touching the aforesaid John; and also the forecited judgment of the said baron, and the cause thereof in manner abovesaid, That it seemed to the lords aforementioned, sitting here in parliament, considering your answers in this behalf, and the examinations and informations had thereupon as before, and having regard also to this, that there were lately sent unto you to the said town and castle of Arde, above the number of men with which you had at another time undertaken the safeguarding of the said town and castle, twenty men of arms, and twenty archers to enforce the same, according to your request then made to certain lords, late being upon a message at Calais on the behalf of the said grandfather; and this also, that at that time it was said unto you by the king of Castile, who is here present, that if you could not well keep them, you ought in no manner to undertake to keep the same, and that another should have and keep them, who would take upon him safely to keep the same to the said grandfather and his heirs aforesaid; and thereupon you undertook to keep them safely without surrendering them to any, except in manner as aforesaid; and now

you, John, without duress or default of victuals or artillery, or of other things necessary for the defence of the said town and castle of Arde, without command of our lord the king, have evilly delivered and surrendered the same to the enemies of our lord the king, by your own default, against all appearance of right or reason, and against your undertaking aforesaid; wherefore the lords aforesaid, here in full parliament, adjudge you to death; and because that you are a gentleman and a baronet, and have served the said grandfather in his wars, and are no liege-man of our lord the king, you shall be beheaded, without having other judgment; and because also that our lord the king is not yet informed of the manner of this judgment, the execution thereof shall be put in respite, until our lord the king be informed thereof. Whereupon the aforesaid constable was commanded safely to keep the said John until he had other command from our lord the king.\*

Cressingham and Spikesworth's Case, 7 Rd. 2.

In the Parliament-Rolls of 7 R. 2, numb. 17, there is this case: *Item*, Upon the complaint which hath been made to the king, of Pierce de Cressingham and John de Spikesworth, esqrs. concerning this, That whereas there were made in the said voyage (to wit, of the bishop of Norwich into Flanders with an army) captains and guardians of the castle of Drinkham in Flanders, which was gained from the enemies, and after that well and sufficiently stored with victuals and other necessities, and strong enough to be held against the enemies, that they left and rendered the said castle to the said enemy, receiving of them for this delivery and surrender, by treaties made with the enemy, a sum of gold, and that by covenant made with the king's enemies, without the will and command of our lord the king himself, or of his lieutenant: for which the said esquires were arrested by command of the king, and after put to their answer in parliament. And the said John Spikesworth excused himself before the king in parliament in this manner: That he had never the custody of the said castle, nor any thing to do therewith, save only that as he was riding into the country, somewhat near the said castle of Drinkham, to make his best advantage upon the enemy, by force of the said enemy he was there chased to the said castle, then being in the custody of the said Pierce de Cressingham; and soon after he saith, That upon an assault made to the bar-bican there, by the enemy, he was unhappily routed, and one of his varlets slain in the garrison very near him, where he remained continually until the said Pierce rendered the same; and otherwise he had never any thing there to do, neither as a soldier thereof, nor

\* Geoffrey Martin, clerk of the crown, made this very Record, and delivered it written in this present Roll, with his own hand.

'in any other manner whatsoever; praying, that therefore it would please our lord the king to have him well excused. To whom it was answered on the behalf of the king, That if any man knoweth not to say more against the said John, contrary to his said answer now made, that the king will hold him well excused, and wills that he shall be dis-arrested, and suffered to go at large. And the said Pierce of Cressingham well knowing that he had the guard of the said castle said, That as soon as the enemies were come before Burburgh, in which were the lord Beaumont, sir William of Elingham, sir Thomas Tryvet, sir William Farrinden, and many other Englishmen; and the town and castle of Burburgh being surrendered to the enemy, of all the soldiers which he had with him at Drinkham, none would there continue with him upon the safeguard of the said castle, but only five persons in all; by reason of which great necessity he was forced, in safeguard of his own person and his people, to make a treaty with the enemy, for to deliver up the said fort; and thereupon he did it, and not for any other cause, nor in any other manner, but only by constraint of the power of the said enemy as aforesaid. And further he saith, That he never received any thing from the said enemy by way of gift, or in any other manner; whereupon he conceiveth, that no man ought to impute any manner of blame, nor of reproach unto his person. But if it shall be thought that he hath done ill in any manner, he puts himself most humbly into the grace of his liege lord. And because that this excuse seemed not at all to be sufficient, he was committed to prison, there to remain until the king our lord had otherwise declared his pleasure concerning him.'

*The Case of the Bishop of Norwich, 7 R. 2.*

In the same parliament of 7 R. 2, numb. 22. The bishop of Norwich, general of the forces sent over into Flanders, having four Articles exhibited against him in this parliament, touching that expedition, and the surrendering of Graveling to the enemy, to which he had given some former Answer, (see num. 15, 17, 20, 21), upon his second arraignment had this proceeding: 'At which day the said bishop rehearsing the four Articles surmised against him formerly in parliament, and in presence of the king himself, gave there his Answers, such almost as before, concerning all the things aforesaid; adjoining thereunto, that the time when he heard the news that the vanguard of the host of France was entered the country of Flanders, and that thereupon the said siege of Ipre was thereby removed, he took a resolution to have encountered the vanguard, for to have fought with them; which purpose of his he could not perform by reason that the captains of his host would not assent thereunto, but those captains and others of his host contraried him, insomuch that of necessity,

'and for doubt of the enemies they ought to depart, and betake themselves to their fortresses; and thereupon the said bishop returned to the town of Graveling, and the same would he have held out well enough against all men, and did hold out until the other captains had rendered their forts to the French; and after that, until that some English might come unto him incontinently, although there were well-nigh about six or seven thousand English lying upon the sands near Calais, who were made to come out of the said forts rendered, to their great mischief and prejudice, because they had not wherewith to live, neither could they have entrance into the town of Calais. And forasmuch as the truce made before that time ought to cease within two or three days then next ensuing, the French had a purpose to run upon them and slay them all, as soon as the said truce was ended; which slaughter, if it had been made, would principally have turned upon the said bishop, and after on the other captains, to far greater villany and mischief than any other thing could bring. The bishop was thereupon required and charged on the behalf of the king himself, that he should render the town to the enemy, or else demolish it, and go his way to succour the said people, and after that towards England, in salvation of himself and others of his host; for they said, That if any thing else but good had happened to the said people lying on the sands, they would have truly called the said bishop to an account before the king himself: whereupon it behoved him the said bishop to abate and void the said town of Graveling, as it was lawful for him to do at his pleasure, being gained by his proper conquest from the enemy. And for this, and for the other reasons formerly alledged by him, as also because that a letter from our lord the king came to him before, commanding him, that if there were great want of victuals in the said town, as in verity there was, that then in salvation of himself, and of the said people, he should void the town and succour the said people, and after return into England; it seems to him, that he ought to be well excused of whatever is surmised against him.' To which the said Chancellor (No. 27), replied and said: 'Master bishop, as to this your last reason, it is true that you had sufficient victual when this letter came unto you; and besides this, the king sent you other victuals in great plenty; and also with it other good letters, containing, how he had appointed his uncle of Spain to come speedily to you for your aid and succour; and all this notwithstanding, you departed thence, leaving the said town to the enemies, against the form of your indenture, by the which the king hath given and granted you whatever

\* See the History of this Treaty and Abatement of the Town in Walsingham's Hist. Angl. p. 327—330, and in Holinshed, Speed, Grafton.

'you might conquer, not at all to render, sell  
'or leave the same to the enemy, but to hold  
'and possess. And also to that which you  
'have said in your first answer, that by your  
'said voyage truces had been agreed between  
'the realms, and happy offers of peace made  
'by the adversaries of France, which you say  
'shall be an introduction to a good and final  
'peace, which God grant, it contains no truth  
'at all: for true it is, that the news spread in  
'the army of France of the coming of our lord  
'the king, and of Monsieur of Lancaster, who  
'was at the sea-side ready to pass for your suc-  
'cour, was the principal cause of the truce and  
'proffers aforesaid, and of the treaty to be  
'commenced; for it is no probable thing at  
all, nor in any wise agreeable to reason, that  
'you who were with your people chased by  
'force of the enemies out of the field, and after-  
'wards besieged by them within your fortresses,  
'should be the cause of the said treaty by any  
'way. And so as to this, nor yet as to any  
'other of the reasons before alleged, nor for  
'the rebellion of your captains or other of  
'your retinue, nor any other defaults which  
'you have or may surmise unto them, (con-  
'sidering that you had them all of your pro-  
'per choosing and election, and not at all by  
'the nomination of our lord the king, or of  
'his council) you neither can or ought to be at  
'all excused of the damages, deceits, villanies,  
'contempts, and the other losses and mispri-  
'sons surmised to you, nor in especial of the  
'treaty made with the enemy upon the deli-  
'verance of the said fortresses, of which there  
'are certain indentures made and drawn be-  
'tween you and your captains on the one part,  
'and the enemies of the king on the other part,  
'sealed with their seals, and the seals of the  
'other captains, without the authority or con-  
'sent of the said our lord the king, as before is  
'said. And moreover the said Chancellor said  
'in the behalf of the king, Sir bishop, although  
'the king our lord might clearly handle and  
'judge you as a temporal person of his realm,  
'because you have behaved and carried your-  
'self as a temporal person; for you expressly  
'obliged yourself to the king our lord by your  
'indentures, to be a soldier of the king, to go-  
'vern the Christian people after the term of  
'your Crossado ended, and you used commonly  
'to have your sword carried before you; and  
'you did many other such like things every  
'day publicly as a lord temporal, against the  
'common custom of the estate of a prelate of  
'England: notwithstanding, by reason of your  
'estate, the king our lord, of his grace, will  
'forbear for the present to lay his hands upon  
'your body. But forasmuch as he is informed,  
'that you yourself have complained to many  
'lords of the realm, that wrong hath been lately  
'done you on the last day, affirming by your  
'words, that that which was done passed not  
'at all by assent or knowledge of your peers  
'of the realm; this is greatly to be marvelled  
'of you, and of these your words, seeing the ill  
'success touched nothing at all your perality,

'but only certain misprisions which you have  
'made and perpetrated as a soldier of the king,  
'against the form of your indentures and cove-  
'nants which you have made with the king our  
'lord, to the great damage of the king as be-  
'fore is said, whereof the connisance and pu-  
'nishment of common right and antient cus-  
'tom of the realm of England, only and totally  
'appertaineth to our lord the king, and to no  
'other. And true it is, that you have not at  
'all by this your last answer any whit amended  
'your matter in excuse of yourself, upon the  
'things surmised against you, but as it seems  
'have more greatly impaired the same. Where-  
'fore by the assent of the earls, barons, and  
'other lords temporal present in this parlia-  
'ment, it is assented and accorded, that you  
'shall be in the mercy of the king, and put to a  
'fine and ransom for your misdoing, according  
'to the quality and quantity thereof. And to  
'do this you shall be compelled and constrained  
'by the seizure of the temporalities of the bi-  
'shopric of Norwich. And the king commands  
'you, that from henceforth you shall not cause  
'nor suffer any sword to be carried before you,  
'as it hath been done, under the peril which  
'shall follow. And it is expressly accorded in  
'this parliament, that whatsoever hath been  
'expended on your use of the said Franks of  
'gold, you shall make full payment thereof in  
'the treasury of our lord the king, without  
'delay or difficulty.'

Upon this judgment the temporalities of this  
bishop were immediately seized into the king's  
hands, and detained in them a long time for  
this his surrender of Graveling; as Walsing-  
ham, Holingshed, Grafton, Speed, Trussel, in  
their histories, and Godwin (in the life of this  
bishop) attest.

#### The Earl of Northumberland's Case, 7 Ric. 2.

In the same parliament,\* 7 R. 2. News  
came from the northern parts, that the Castle  
of Berwick was taken by the Scots, whose cus-  
tody Henry Piercy earl of Northumberland  
then possessed by antient right; the Scots, for  
money, fraudulently getting entrance into the  
said castle by one who had the custody of it at  
the second-hand, under the earl. Hereupon,  
by duke John's procurement (as was reported),  
the said earl on the fourth of December, for the  
loss of the said royal Castle, by the judgment  
of the lords, and of the king then present in the  
said parliament, had a sentence of condem-  
nation publicly pronounced against him, not-  
withstanding that the said earl had been sum-  
moned to the said parliament by the king's  
writ, and would rather have tarried at home for  
the defence of his country. But the execution  
of the said sentence was soon after released by  
the king, and the earl by his indulgence re-  
stored to his life and possessions, which he was  
adjudged to lose. Whereupon he posted into  
the North, and calling his forces and friends to-  
gether, strongly besieged the said castle, and in

\* Walsing. Hist. Angl. p. 337.

a few days took it by composition, he giving the besieged their lives, moveables, and 2,000 marks to surrender it.

The Case of Sir William de Elmham, and others, 7 Ric. 2.

In the Parliament-Rolls of 7 Ric. 2. nom. 24, there is this record: Item, sir William de Elmham, sir Thomas Tryvet, sir Henry de Ferriers, and sir William de Farndon, knights, and Robert Fitz-Ralph, esq. who by the said charge formerly given in parliament, had been with the chancellor, and acknowledged and confessed to him, how that they had received certain sums of Franks of gold of the French, in lawful and due manner, and not otherwise. To which they said, 'First of all, that is to say, the said sir William de Elmham, Thomas Tryvet, and William Farndon, in one parcel 3,000 franks of gold. Item, In another parcel, &c. Item, the said sir William Elmham received another parcel of the French for the castle of Burburgh, whereof master William de Hoo was then captain; and for the victuals of the said master William de Hoo, being in the said castle of Burburgh, 2,000 franks; whereof the said William de Elmham presently paid, as he said, 1,000 franks to the said master William de Hoo, and the other thousand franks he promised to pay at a certain term to the same master William de Hoo, &c. Item, 'There is another great misprision that some sieges of the king rendered and delivered to the said enemies of the king, castles, fortresses, victual, armour and other refreshment, without special command and authority of the king, or of his lieutenant; but yet it is far worse to sell or alien to the said enemies any fort, victuals, armour or other refreshment, by receiving money or other goods of the said enemies, without authority of the king, or of the same his lieutenant. And, Sirs, you know well, and cannot deny, that by certain covenants made between the said French enemies, and you the said sir William de Elmham, Thomas Tryvet, Henry de Ferriers, and William de Farndon, and others, of which there are certain indentures made and sealed with your seals, you lately made a treaty with the said enemies, without the will or authority of the king, or of his lieutenant; and by this treaty, and your sale of the said forts, victuals and arms, you received the said sums of gold; and by this, and by other your affairs, and rebellions made to your general, the said host was spoiled and destroyed, to the grievous damage, villany, and contempt of the king our lord, and very great profit and comfort of the said enemies, for which you are worthy to undergo reproach and grievous punishment. For you, sir William de Elmham, received of the said enemies the said 2,000 franks, for the sale and surrender of the said castle of Burburgh, and of the victuals, arms, and other goods therein, then being to a great number and value, without the leave and authority of the king our lord, and the consent of the said

master William de Hoo, captain of the same, although that the said castle was well able to have held out for a long time against all men. And also you the said William de Elmham, Thomas Tryvet, and William de Farndon, received to your proper use in common, the said 3,000 franks of the gift of the said enemy, for your consent and aid to the said treaty, made upon the voidance of the English out of that country, and the deliverance of the town of Graveking, and of the other fortresses then occupied in those parts, &c. And you the said sir William Farndon are in another very great default, because you would not carry back to the said enemy the 5,000 franks by you left at Graveking, against the will and command of the said bishop your chieftain, &c. And the said sir William de Elmham saith, That although he hath so received the sums aforesaid, yet it was done for victuals, prisoners, and other goods which he had within the fortress of Burburgh, and elsewhere in those parts, and which, with the said fortress, he rendered by the said treaty, as of fine force he ought to do for the salvation of himself and his people; for otherwise the Town of Burburgh, where the lord Beaumont, sir Thomas Tryvet, sir William Tryvet, sir William de Elmham, and a great number of the people of their army were besieged, and assaulted by the enemies in very great number, and the town within set on fire had been taken by them by force, and all those within it taken or slain: and therefore he conceiveth, that in doing this he hath done nothing amiss. But notwithstanding, if it appears to the king our lord that he hath done any thing amiss, he puts himself upon his noble grace, &c. And the said chancellor, in replying to the said sir William de Farndon, Henry, and Robert, saith, &c. And certainly as to this which you sir William de Farndon say, That it had been better to cast the said gold into the sea, than to have sent it back to the said enemy: this is not true; for it had been better that the enemy had received their own gold, than any traitor of the king our lord: and he who shall hereafter sell the fortresses of the king to the enemy for gold, or other goods, may excuse himself in such manner as you would now excuse yourself. And after these matters, thus by the same persons alledged for their excuse, being considered, and held and adjudged insufficient for their excuse, in this behalf; the said chancellor, in behalf the king, spake thus: It is accorded in parliament, that you sir William de Elmham, Thomas Tryvet, Henry Ferriers, William de Farndon, and Robert Fitz-Rauf, shall make agreement and full payment to our lord the king of whatsoever you or any of you have so received and taken of the enemy aforesaid; and further, that all you the said sir William de Elmham, Thomas, Henry, and Robert, be committed to prison, and there ransomed at the will of the king for your misdeeds aforesaid, having due consideration of

'the quality and quantity of that deed which every one of you hath done. And that you sir William de Farndon, because that you have received of the said enemies divers sums of gold, and have given them horses to their great refreshment, for which you had no licence of the king, nor of his lieutenant, shall be in the mercy of the king, body and goods, to do with them what he pleaseth.'

*The Duke of Suffolk's Case, 28 Hen. 6.*

In the Parliament of 28 Hen. 6. Rot. 50, 51. 54, the Commons preferred divers Articles of High-Treason to the King and Lords against the duke of Suffolk; among others these ensuing: That he being Ambassador for the king of England to Charles, calling himself French king, promised to Reynor king of Sicily, and to Charles Dangers his brother, onemies to the king, the release of Angeou; with the deliverance of the county of Main, and the city of Mault or Mauns; which promise, after his return, he caused to be performed, to the king's disinheritance and loss irrecoverable, and to the strengthening of his enemies, and feeblishment of the duchy of Normandy. To the which Article he answered, That his commission was, to conclude and do all things according to his discretion, for the obtaining of a peace; and because, without delivery of those countries, he perceived the truce could not be obtained, he agreed to the release and deliverance of them.

*Item,* The said duke, within this your realm, hath entirely counselled you to grant fro you, without due consideration, the castle of Mawlyon de Sool, and full many divers other great lordships, seignouries, places, offices, profits, revenues, casualties, and commodities within your said duchy of Guyen, whereby your power there to support your wars and arms, and to pay the wages of your great counsellors, captains and soldiers, hath been so enfeebled, that your people of the same duchy, neither your land there, might in no wise be defended.

*Item,* The said duke of Suffolk, without liberation and advice of your council, hath caused your highness to grant to divers persons, many captains, offices, towns, lordships, places, interests, profits and revenues within your realm of France, and duchy of Normandy, to such persons as were not to you profitable, nor able, nor convenient to have or govern any of the premises, nor ever had deserved to obtain of your grace any such grant; which hath been done by him for his great avail and lucre, and hath been one of the greatest means of the loss of the said realm of France, and duchy of Normandy.

The duke upon these Articles was committed to the Tower for one month's space, to pacify the people, and then released by the queen's means, who entirely loved him: whereupon the Commons were so far from being pacified, that they were more enraged; openly denouncing, that it was a shame to all the whole realm to see such a person, guilty of so many

misdeeds, either to rule about a priñce, or to be had in honour, or suffered to go unpunished. Upon this the commons rising up in divers places of the realm in companies under captain Blewbeard, the commons in parliament earnestly beseeched the king, that such a person as assented to the release of Angeou, and deliverance of France, &c. might be extremely punished and tormented; and to be privy to this fact, they accused as principal the said duke of Suffolk, with John bishop of Salisbury, sir James Fines, lord Say, and others. Whereupon, the king plainly seeing, that neither glossing would save, nor dissimulation appease the continual clamour of the importunate commons against the queen's darling and his complices; to begin a short pacification of so long a broil, first, he sequestered the lord Say, being treasurer of England, from his office (who for the same offence was after committed to the Tower, and after that beheaded by Jack Cade, and the Kentish mutineers, at the standard in Cheapside, who carried his head about the streets of London fixed on a pole, &c.): and then by his own authority, assembling all his lords spiritual and temporal together, on the 17th day of March, in a chamber over the Cloysters at Westminster, he arraigned and banished the said duke for five years, against the lords and commons consent, who would have capitally proceeded against him; meaning by this exile to appease the present furious rage of the people, and that pacified, to recal him to his old estate, as the queen's chief friend and counsellor. But fortune would not that he should so escape; for when he was shipped in Suffolk, intending to be transported into France, he was encountered by a ship of war appertaining to the duke of Exeter, of which the constable of the Tower of London was captain; who entering the duke's ship, with small fight brought him to Dover road, and there on the side of a cock-boat cut off his head as a traitor, and there left his body and head upon the sands. Such was the end of these two ill counsellors, only for advising this weak king himself thus dishonourably and cowardly to surrender up these towns, forts, and territories in France, to his enemies, to purchase an unhappy peace, to the king's and kingdom's irreparable great damage, dishonour, and weakening, and the enemy's extraordinary advantage, strengthening and encouragement.

*The Lord Wentworth's Case, 1 Eliz.*

The lord Wentworth, governor of Calais, delivering up that town to the French, (after they had taken the castle by force, made a breach in the town-walls, and slain above fourscore of the garrison at one assault when they took the castle, together with sir Anthony Ager, marshal of the town, and his son and heir) and that upon dishonourable terms, not without some suspicion of treachery; he was thereupon indicted in queen Mary's days for his cowardly and treacherous surrender of this town, contrary to his trust; and after that was arraigned

at Westminster in the first year of queen Elizabeth, the marquis of Northampton being his judge, and lord chief steward of England for that day. But that nobleman so nobly defended himself, that he was acquitted by his Peers.

Van Hemert's Case, 29 Eliz.

Meteranus,\* Grimstone,† Thuanus, and others relate, A. D. 1587: 'That Van Hemert, a very wise and brave young nobleman, one of the chief houses of the Netherlands, and governor of the town of Grave, together with two of his captains, Du Banck and Corfe, were imprisoned, condemned by a council of war, and then beheaded and executed at Bommel, by command of Robert Dudley earl of Leicester, (governor of the Low Countries under queen Elizabeth of famous memory) for that they surrendered the said town of Grave to the prince of Parma, when he had besieged it above three months space, with a puissant array, and beaten down the walls of it level to the ground, with perpetual batteries and as-

\* Belgica Hist. Universalis, l. 13, p. 403, 403, 404. † Pag. 827, 828.

'saunts: and although there appeared no treachery at all, nor any intelligence held with the enemy, in this case; and that the governor condescended to a treaty, and surrendered the town to the enemy only upon the citizens' importunity, who earnestly intreated him upon their knees with tears in their eyes to embrace a parley, for the saving of their lives, estates, and liberties, which were granted them upon the Articles of Agreement; and although the garrison-soldiers likewise marched away with their arms (which they left behind them at Bristol), and had all the articles punctually fulfilled; and although himself and his potent friends earnestly besought the earl of Leicester, that he might serve the queen of England either by sea or land at his own charges, and by his valour and fidelity make recompence of his fault committed only through want of understanding and martial policy, contrary to the will and intent of the earl, then governor-general under the queen; yet the earl, for upholding martial discipline, and to prevent all future surrenders of this kind, would on no wise dispense with the execution; whereupon they were all three openly beheaded at Bommel, June 28, 1587.'

171. The Trial of Dr. WILLIAM LAUD,\* Archbishop of Canterbury, for High Treason: 16-20 CHARLES I. A. D. 1640-1644. [Written by Himself during his Imprisonment in the Tower. History of the Trial and Troubles of Archbishop Laud, published by Henry Wharton, 1695.]

[ON the 16th of December 1640, upon the Condemnation of the New Canons in the House of Commons, as being against the King's Prerogative, the fundamental Laws of the realm, the Liberty and Property of the Subject; and containing divers things tending to Sedition, and of dangerous consequence; Dr. William Laud, Archbishop of Canterbury, was there accused to be the Author of, and chief Actor in them, and was ordered to be impeached of High-Treason; whereupon a special Committee was appointed to enquire into all his actions, and prepare a Charge against him, which is thus entered in the Journal of the House of Commons:

"December 16, 1640. This Committee is to prepare the several Votes concerning the

New Canons, and to make them ready for this House to present the same to the Lords, and to consider and examine who were the promoters of these New Canons, and who the principal actors, and what execution hath been made upon them, and by whom; and to consider how far the Lord Archbishop of Canterbury hath been an actor in all the proceedings of them; and further, to examine how far he hath been an actor in the great design of the Subversion of the Laws of the realm, and of the Religion, and to prepare and draw up a Charge against him, and such others as shall appear offenders in these particulars, and have power to send for parties, witnesses, papers, books, records, and to do any other act, which they in their judgments should think fit to conduce to the business, and are to meet at 4 a'clock this afternoon in the Star-Chamber."

On the 18th of December, the Archbishop was impeached in the house of Commons of High-Treason, and voted by the whole House to be a Traitor, thus entered in their Journal:

"December 18, 1640. Resolved upon the question, That a Message shall be sent from this House to the Lords, to accuse William Laud, archbishop of Canterbury, of High-Treason, in the name of this House; and of all the Commons of England, and to desire that he may be sequestered from parliament, and committed;

\* See Clarendon Hist. vol. 1. p. 69, 118, 141, vol. 2, p. 440, &c. In order to make this Trial the more complete, what was wanting is supplied out of Rushworth's Collections, vol. 5, p. 763, &c. and Prynne's Complete History of this Trial. The Additions are inserted in their proper places; but to preserve the Archbishop's own Account entire, they are distinguished by being within brackets. See also 2 Cobb. Parl. Hist. p. 680, and Sommers' Tracts, 2 Coll. vol. 2, p. 287.

and that within some convenient time, this House will resort to their lordships with particular Accusations and Articles against him; and that Mr. Hollis go up with the same."

Upon this Accusation, divers remarkable Speeches were made against him in the House of Commons; among others one by

*Mr. Harbottle Grimstone*, as follows:

"Mr. Speaker, there hath been presented to the house a most faithful and exact Report of the Conference we had with the lords yesterday, together with the opinion of the Committees that we employed in the service, That they conceived it fit that the archbishop of Canterbury should be sequestered; and I must second the motion. And with the favour of this house I shall be bold to offer my reasons, why I conceive it more necessary we should proceed a little further than the desire of a bare sequestration only.

"Mr. Speaker, Long introductions are not suitable to weighty businesses; We are now fallen upon the great man, the Archbishop of Canterbury; Look upon him as he is in Highness, and he is the sty of all pestilential filth, that hath infested the state and government of this Commonwealth; Look upon him in his Dependencies, and he is the only man, the only man that hath raised and advanced all those that, together with himself, have been the authors and causers of all our ruins, miseries, and calamities we now groan under. Who is it but he only that hath brought the earl of Strafford to all his great places and employments? A fit spirit and instrument to act and execute all his wicked and bloody designs in these kingdoms. Who is it but he only that brought in secretary Windebank into this place of service, of trust, the very broker and pandar to the whore of Babylon?

"Who is it, Mr. Speaker, but he only that hath advanced all our Popish Bishops? I shall name but some of them, bishop Manwaring, the bishop of Bath and Wells, the bishop of Oxford, and bishop Wren, the least of all these birds, but one of the most unclean ones. These are the men that should have fed Christ's Flock; but they are the wolves that have devoured them; The sheep should have fed upon the mountains; but the mountains have eaten up the sheep. It was the happiness of our Church, when the zeal of God's house eat up the Bishops, glorious and brave Martyrs, that went to the Stake in defence of the Protestant religion; but the zeal of our Bishops have been only to persecute and eat up the Church.

"Who is it, Mr. Speaker, but this great Archbishop of Canterbury, that hath sat at the helm, to steer and manage all the Projects that have been set on foot in this kingdom this 10 years last past? And rather than he would stand out, he hath most unworthily trucked and chaffered in the meanest of them. As, for instance, that of Tobacco, whereby thousands of poor people have been stripped and turned out of their trades, for which they have served as appren-

tices. We all know he was the compounder and contractor with them for the licences, putting them to pay Fines and a Fee-farm Rent to use their trade. Certainly, he might have spent his time much better, and more for his grace in the pulpit, than thus sharking and raking in the Tobacco-shops. Mr. Speaker, we know what he hath been charged withal in this House, crimes of a dangerous consequence, and of a transcendent nature, no less than the Subversion of the Government of this kingdom, and the alteration of the Protestant Religion; and this is not upon a bare information only, but much of it is come before us already upon clear and manifest Proofs; And there is scarce any Grievance or Complaint come before us in this place, wherein we do not find him intermentioned, and, as it were, twisted into it; like a busy angry wasp, his sting is in the tail of every thing. We have this day likewise heard the Report of the Conference yesterday, and it is the Accusation which the Scotch Commissioners have charged him withal; and we do all know he is guilty of the same, if not more, here in this kingdom.

"Mr. Speaker, He hath been the great and common enemy of all goodness and good men; and it is not safe that such a viper should be near his majesty's person, to distil his poison into his sacred ears; nor is it safe for the commonwealth that he sit in so eminent a place of government, being thus accused. We know what he did in the earl of Strafford's case; This man is the corrupt fountain, that hath corrupted all the streams; and till the fountain be purged, we can never expect nor hope to have clear channels. I shall be therefore bold to offer my opinion; and if I err, it is the error of my judgment, and not my want of zeal and affection to the public good: I conceive it is most necessary and fit that we should now take up a Resolution to do somewhat, to strike while the iron is hot, and to go up to the Lords in the names of the Commons of this House, and in the names of the Commons of England, and to accuse him of High-Treason; and to desire their lordships, his person may be sequestered, and that in convenient time we may bring up his Charge."]

December 18, 1640, being Friday. Upon this day, Mr. Denzil Hollis, second son to John earl of Clare, by order from the house of commons, came up to the Lords, and accused me of High-Treason; and told the Lords, they would make proof thereof in convenient time: but desired in the mean time, that I might be committed to safe custody. This was strange news to my innocence; for this I can say of myself, without falshood or vanity, that to the uttermost of my understanding I served the king, my gracious master, with all duty and faithfulness; and without any known or wilful disservice to the state there-while. And this I did, with as true and free a heart as ever any man did that served a king. And, I thank God, my care was such for the public, that it is well

known I much neglected my own private fortunes there-while. The more was I amazed at the first apprehension of this heavy and undeserved Charge.

Upon this Charge, I was commanded to withdraw. But I first desired leave to speak a few words: and I spake to this effect, That I was heartily sorry for the offence taken against me; and that I was most unhappy, to have my eyes open to see that day, and mine ears to hear such a Charge: but humbly desired their lordships to look upon the whole course of my life, which was such, as that I did verily persuade myself, not one man in the House of Commons did believe in his heart that I was a Traitor. Here my lord the earl of Essex interrupted me, and said, 'That Speech of mine was a scandal put upon the whole House of Commons, that they should bring me up charged with so high a crime, which themselves did not believe.' I humbly desired then, that I might be proceeded with in the ancient parliamentary way of England. This the lord Say excepted against; as if I would prescribe them how they should proceed. So I withdrew, as I was commanded, and was presently called in again to the bar; and thence delivered to Mr. James Maxwell, the officer of the Black Rod, to be kept in safe custody, till the House of Commons should farther impeach me.

[December 18, 1640. "It is this day ordered, That the Lord Archbishop of Canterbury (being accused of High-Treason by the House of Commons in their own names, and in the name of the whole kingdom of England) be committed to the safe custody of the Gentleman Usher attending this high court, and that he be sequestered from the said house, until his Grace shall clear himself of the Accusation that shall be laid against him by the said house."—The Lords further ordered, "That no member of the house should visit the Archbishop without leave of the house."]

Here I humbly desired leave, that I might go home to fetch some Papers necessary for my Defence. This was granted me with some difficulty; and Mr. Maxwell was commanded to attend me all the while I should stay. When I was gone to Lambeth, after some little discourse (and sad enough) with my steward, and some private friends, I went into my Chapel to Evening-Prayer. The Psalms for that day, [Psal. lciij. and lciiv. In vulgata Editione, Psal. lciij. and lciij.] gave me much comfort, and were observed by some friends then present, as well as by myself. And upon the comfort I then received, I have every day since (unless some urgent business prevented me) read over both these Psalms; and God willing, purpose so to do every day of my life. Prayers being ended, I went with Mr. Maxwell, as I was commanded: hundreds of my poor neighbours standing at my gates to see me go, and praying heartily for my safe return to my house; for which I blessed God, and them.

Upon Friday, Feb. 26, 1640-1, I had been full ten weeks in restraint, at Mr. Maxwell's house: and this day, being St. Augustine's Day, my Charge in general Articles was brought up from the House of Commons to the Lords, by sir Henry Vane the younger. It consisted of 14 Articles. These Generals they craved time to prove in particular; and that I in the mean time might be kept safe. Upon this I was presently sent for to the house, and the Articles were read to me at the bar.

They were carried up by Mr. Pym, Mr. Hampden and Mr. Maynard. And Mr. Pym coming to the Lords' bar to present them, spake as followeth:

*Mr. Pym's Speech.*

My lords; I am commanded by the knights, citizens, and burghes, now assembled for the Commons in parliament to deliver to your lordships these Articles, in maintenance of their Charge against the Archbishop of Canterbury. Their desire is, That first your lordships would be pleased to hear the Articles read; and then I shall endeavour to present to you the sense of the Commons concerning the nature of the Charge, and the order of their proceedings. (The Articles being mentioned hereafter, are here omitted.) The Articles being read, Mr. Pym proceeded as follows:

My lords; There is an expression in the Scripture which I will not presume either to understand, or to interpret; yet to a vulgar eye it seems to have an aspect something suitable to the person and cause before you. It is a description of the evil spirits, wherein they are said to be 'Spiritual wickednesses in high places.' Crimes acted by the spiritual faculties of the soul, the will and understanding, exercised about spiritual matters, concerning God's worship and the salvation of man, seconded with power, authority, learning, and many other advantages, do make the party who commits them very suitable to that description, 'Spiritual wickednesses in high places.' These crimes, my lords, are various in their nature, heinous in their quality, and universal in their extent. If you examine them Theologically, as they stand in opposition to the Truth of God, they will be found to be against the rule of faith, against the power of godliness, against the means of salvation.—If you examine them Morally, as they stand in opposition to the Light of Nature, to right reason, and the principles of human society, you will then perceive pride without any moderation; such a pride as that is which exalts itself above all that is called God: malice without any provocation; malice against virtue, against innocence, against piety; injustice, without any means of restitution; even such injustice as doth rob the present times of their possessions, the future of their possibilities.—If they be examined, my lords, by legal rules in a Civil way, as they stand in opposition to the public good, and to the laws of the land, he will be found to be a traitor against his majesty's crown, an in-

condiary against the peace of the state; he will be found to be the highest, the holdest, and most impudent oppressor that ever was, an oppressor both of king and people.

This Charge, my lords, is distributed and conveyed into 14 several Articles, as you have heard; and those Articles are only general, it being the intention of the House of Commons (which they have commanded me to declare) to make them more certain and particular by preparatory Examinations, to be taken with the help of your lordships house, as in the Case of my lord of Strafford. I shall now run through them with a light touch, only marking in every of them some special point of venom, virulency and malignity.

1. The first Article, my lords, doth contain his endeavour to introduce into this kingdom an arbitrary power of Government, without any limitations or rules of law. This, (my lords) is against the safety of the king's person, the honour of his crown, and most destructive to his people. Those causes which are most perfect have not only a power to produce effect, but to conserve and cherish them. The seminary virtue and the nutritive virtue in vegetables do proceed from the same principles. It was the defect of justice, and for the restraining of oppression and violence, that first brought Government into the world, and set up kings, the most excellent way of government; and by the maintenance of justice all kinds of government receive a sure foundation and establishment. It is this that hath in it an ability to preserve and secure the royal power of kings, yea to adorn and increase it.

2. In the second Article, your lordships may observe absolute and unlimited Power defended by Preaching, by Sermons, and other Discourses printed and published upon that subject. And truly (my lords) it seems to be a prodigious crime, that the Truth of God and his Holy Law should be perverted to defend the lawlessness of men; that the holy and sacred function of the Ministry, which was ordained for instruction of mens souls in the ways of God, should be so abused, that the ministers are become the Trumpets of Sedition, the promoters and defenders of violence and oppression.

3. In the third Article, my lords, you have the Judges, who under his majesty are the dispensers and distributors of Justice, frequently corrupted by fear and solicitation: you have the course of justice, in the execution of it, shamefully obstructed. And, if a wilful act of injustice in a judge be so high a crime, in the estimate of the law, as to deserve death; under what burden of guilt doth this man lie, who hath been the cause of great numbers of such voluntary and wilful acts of injustice?

4. In the fourth Article he will be found in his own person to have sold Justice in causes depending before him; and by his wicked counsel endeavouring to make his majesty a merchant of the same commodity: only with this difference, that the king by taking money

for places of judicature should sell it in gross, whereas the Archbishop sold it by retail.

5. In the fifth Article there appears a power usurped of making Canons, of laying obligations on the subjects in the nature of law; And this power abused to the making of such Canons as are in the matter of them very pernicious, being directly contrary to the Prerogative of the king, and the Liberty of the people. In the manner of pressing them, may be found fraud and shuffling; in the conclusion, violence and constraint, men being forced by terror and threatening to subscribe to all. Which power thus wickedly gotten, they labour to establish by perjury, enjoining such an Oath for the maintenance of it, as can neither be taken nor kept with a good conscience.

6. In the sixth Article you have the king robbed of his supremacy; you have a Papal Power exercised over his majesty's subjects in their consciences, and in their persons; you have Ecclesiastical Jurisdiction claimed by an incident right, which the law declares to proceed from the crown.—And herein your Lordships may observe, That those who labour in Civil matters to set up the king above the Laws of the kingdom, do yet in Ecclesiastical matters endeavour to set up themselves above the king. This was first procured by the Archbishop to be extra-judicially declared by the Judges, and then to be published in a Proclamation: in doing whereof, he hath made the king's throne but a footstool for his own and their pride.

7. You have, my lords, in the seventh Article, Religion undermined and subverted: you have Popery cherished and defended; you have this seconded with power and violence, by severe Punishment upon those which have opposed this mischievous intention: And by the subtle and eager prosecution of these men, hath the Power of Ecclesiastical Commissioners, of the Star-Chamber and Council-Table, been often made subservient to his wicked designs.

8. My lords, you may observe in the eighth Article, great care taken to get into his own hand the Power of nominating to Ecclesiastical Livings and Promotions: You have as much mischievous, as much wicked care taken in the disposing of these Preferments, to the hindrance and corruption of religion. And by this means, my lords, the king's sacred majesty, instead of Sermons fit for spiritual instructors, hath often had invectives against his people, encouragement to injustice, or to the overthrow of the laws. Such chaplains have been brought into his service as have, as much as may be, laboured to corrupt his own household, and been eminent examples of corruption to others; which hath so far prevailed, as that it hath exceedingly tainted the Universities, and been generally dispersed to all the chief cities, the greatest towns and auditories of the kingdom. The grievous effects whereof are most manifest to the Commons House, there being divers hundred Complaints there depending in the house

against scandalous Ministers; and yet I believe the hundredth part of them is not yet brought in.

9. The ninth Article sets out the like care to have chaplains of his own, that might be promoters of this wicked and traitorous design, men of corrupt judgments, of corrupt practices, extremely addicted to superstition. And to such mens care hath been committed the licensing of Books to the press: by means whereof, many have been published that are full of falshood, of scandals, such as have been more worthy to be burnt by the hand of the hangman in Smithfield, (as I think one of them was) than to be admitted to come into the hands of the king's people.

10. In the tenth Article it will appear, how he having made these approaches to Popery, comes now to close and join more nearly with it: he confederates with Priests and Jesuits; he, by his instruments, negotiates with the Pope at Rome, and hath correspondence with them that he authorised from Rome here; he hath permitted a Roman Hierarchy to be set up in this kingdom. And though he hath been so careful, that a poor man could not go to the neighbour-parish to hear a Sermon, when he had none at home, could not have a sermon repeated, nor prayer used in his own family, but he was a fit subject for the High-Commission Court; yet the other hath been done in all parts of the realm, and no notice taken of it by any Ecclesiastical Judges or Courts.

11. My lords, you may perceive Preaching suppressed in the eleventh; divers godly and orthodox ministers oppressed in their persons and estates. You have the king's loyal subjects banished out of the kingdom; not as Elimelech, to seek for bread in foreign countries, by reason of the great scarcity which was in Israel; but travelling abroad for the Bread of Life, because they could not have it at home, by reason of the spiritual famine of God's Word, caused by this man and his partakers. And by this means you have had the trade, the manufactory, the industry of many thousands of his majesty's subjects carried out of the land.—It is a miserable abuse of the Spiritual Keys, to shut up the Doors of Heaven, and to open the Gates of Hell; to let in profaneness, ignorance, superstition, and error. I shall need say no more: these things are evident, and abundantly known to all.

12. In the twelfth Article, my lords, you have a Division endeavoured between this and the foreign Reformed Churches. The Church of Christ is one body; and the members of Christ have a mutual relation, as members of the same body. Unity with God's true Church every where, is not only the beauty, but the strength of religion; of which beauty and strength he hath sought to deprive this Church, by his manifold attempts to break this Union. To which purpose he hath suppressed the Privileges granted to the Dutch and French Churches: he hath denied them to be of the same faith and religion with us: and many

other ways hath he declared his malice to those churches.

13. In the thirteenth Article, as he hath sought to make an Ecclesiastical Division of religious difference between us and foreign nations, so he hath sought to make a Civil Difference between us and his majesty's subjects of the kingdom of Scotland: and these he hath promoted by many Innovations there, pressed by himself and his own authority. When they were incapable of such Alterations, he advised his majesty to use violence. He hath made private and public Collections towards the maintenance of the war, which he might justly call his own war; and with an impudent boldness hath struck Tallies in the Exchequer for divers sums of money procured by himself, *pro Defensione Regni*; when, by his counsels, the king was drawn to undertake, not a defensive but an offensive war.

14. He hath, lastly, thought to secure himself and his party, by seeking to undermine Parliaments, and thereby hath laboured to bereave this Kingdom of the legislative power, which can only be used in parliaments; and that we should be left a kingdom, without that which indeed makes and constitutes a kingdom, and is the only means to preserve and restore it from distempers and decays. He hath hereby endeavoured to bereave us of the highest Judicatory; such a judicatory, as is necessary and essential to our government, some for cases of treason, and others concerning the Prerogative of the crown, and Liberty of the people. It is the Supreme Judicatory, to which all difficult cases resort from other courts. He hath sought to deprive the king of the love and counsel of his people, and of that assistance which he might have from them; and likewise to deprive the people of that Relief of Grievances, which they most humbly expect from his majesty.

My Lords, The Parliament is the Cabinet wherein the chiefest jewels both of the crown and kingdom are deposited. The great prerogative of the king and liberty of the people are most effectually exercised and maintained by Parliaments. Here, my lords, you cannot pass by this occasion of great thanks to God and his majesty for passing the Bill, whereby the frequent course of parliaments is established; which I assure myself he will by experience find to be a strong foundation both of his honour and of his crown.

This is all, my lords, I have to say to the particulars of the Charge. The Commons desire your lordships, that they may have the same way of Examination that they had in the Case of the earl of Strafford; that is, to examine members of all kinds, of your lordships house and their own, and others, as they shall see cause: and those Examinations to be kept secret and private, that they may with more advantage be made use of when the matter comes to trial. They have declared, That they reserve to themselves the power of making Additional Articles; by which they intend to re-

duce his Charge to be more particular and certain, in respect of the several times, occasions, and other circumstances of the offences therein charged. And that your lordships would be pleased to put this cause in such a quick way of proceeding, that these great and dangerous crimes, together with the offenders, may be brought to a just judgment.

When the Clerk of the Parliament had done reading, I humbly craved leave of the Lords to speak a few words; which were to this effect:

‘My Lords, this is a great and a heavy Charge, and I must be unworthy to live; if it can be made good against me: For it makes me against God, in point of Religion; against the king, in point of Allegiance; and against the public, in point of safety, under the justice and protection of law. And though the king be little, if at all mentioned; yet I am bold to name him, because I have ever been of opinion, that the king and his people are so joined together in one civil and politic body, as that it is not possible for any man to be true to the king, as king, that shall be found treacherous to the state established by law, and work to the subversion of the people: though perhaps every one, that is so, is not able to see through all the consequences, by which one depends upon the other. So my Charge, my lords, is exceeding heavy in itself; though I, as yet, do not altogether feel the weight of it. For it is yet (as your lordships see) but in generals; and generals make a great noise, but no proof: whereas it is Proof upon particulars that makes the weight of a charge sit close upon any man. Now, my lords, it is an old and a true rule, ‘Errare contingit descendendo,’ Error doth most often happen, and best appear, when men descend to particulars: and with them when I shall be charged, I hope my innocence will furnish me with a sufficient Answer to any error of mine, that shall be thought criminal, or any way worthy the cognizance of this high and honourable Court. As for human frailties, as I cannot acquit myself of them, so, I presume, your lordships will be favourable judges of them: since in the trans-action of so many businesses as passed my hands, men, far abler than ever I can be, have been subject to them; and, perhaps, to as many and as great. But for Corruption in the least degree (I humbly praise God for it), I fear no Accuser that will speak truth. But, my lords, that which goes nearest unto me among these Articles, is, That I should be thought foul and false in the profession of my Religion: As if I should profess with the Church of England, and have my heart at Rome, and labour by all cunning ways to bring Romish superstition in upon the kingdom. This, my lords, I confess, troubles me exceedingly: and if I should forget myself, and fall into passion upon it, I should but be in that case which St. Jerome confessed he was in, when he knew not how to be patient,

‘when falsehood in religion was charged upon him. And yet that was nothing so high a charge as this which is laid against me: which is not only to be basely false myself, but withal, to labour to spread the same falsehood over the whole kingdom.’

And here I humbly besought their lordships; that I might a little enlarge myself, and I did so. But because I purpose here to set down the general Articles that were brought up against me, and that one of them comes home to this point of Religion; I shall put it off till I come to that Article, and there set it down at large, what I now said. And this I do to avoid an useless and tedious repetition. Here then follow the Articles themselves, as they were that day charged upon me.

ARTICLES of the Commons assembled in Parliament, in Maintenance of their Accusation against WILLIAM LAUD, Archbishop of CANTERBURY, whereby he stands charged with High Treason, and other High Crimes and Misdemeanors.

I. THAT he hath traitorously endeavoured to subvert the fundamental laws and government of this kingdom; and instead thereof, to introduce an arbitrary and tyrannical Government against law: And to that end hath wickedly and traitorously advised his majesty, that he might, at his own will and pleasure, levy and take Money of his subjects without their consent in parliament. And this, he affirmed, was warrantable by the law of God.

II. He hath, for the better accomplishment of that his traitorous Design, advised and procured divers Sermons, and other Discourses, to be preached, printed and published, in which the Authority of Parliaments, and the Force of the laws of this kingdom, are denied; and an absolute and unlimited power over the persons and estates of his majesty's subjects is maintained and defended, not only in the king, but also in himself, and other Bishops, above and against the law. And he hath been a great protector, favourer and promoter of the Publishers of such false and pernicious Opinions.

III. He hath by letters, messages, threats, promises, and divers other ways, to Judges and other Ministers of Justice, interrupted and perverted; and at other times, by the means aforesaid, hath endeavoured to interrupt and pervert, the course of Justice in his majesty's Courts at Westminster, and other courts, to the subversion of the laws of this kingdom; whereby sundry of his majesty's Subjects have been stopped in their just suits, and deprived of their lawful rights, and subjected to his tyrannical will, to their utter ruin and destruction.

IV. That the said Archbishop hath traitorously and corruptly sold Justice to those that have had Causes depending before him, by colour of his ecclesiastical jurisdiction, as Archbishop, High-Commissioner, Referee, or otherwise: and hath taken unlawful Gifts and Bribes of his majesty's subjects: And hath, as much as in him lieth, endeavoured to corrupt

other courts of justice, by advising (and procuring) his majesty to sell places of Judicature, and other Offices, (and procuring the sale of them) contrary to the laws and statutes in that behalf.

V. He hath traitorously caused a Book of Canons to be composed and published, (and those Canons to be put in execution) without any lawful warrant and authority in that behalf. In which pretended Canons many matters are contained contrary to the king's Prerogative, to the fundamental laws and statutes of this realm, to the right of parliament, to the propriety and liberty of the subjects; and matters tending to sedition, and of dangerous consequence; and to the establishment of a vast, unlawful, and presumptuous power in himself and his successors: Many of the which Canons, by the practice of the said Archbishop, were surreptitiously passed in the last Convocation, without due consideration and debate: others by fear and compulsion were subscribed to by the prelates and clerks there assembled, which had never been voted and passed in the Convocation, as they ought to have been. And the said Archbishop hath contrived, and endeavoured to assure and confirm the unlawful and exorbitant power which he hath usurped and exercised over his majesty's subjects, by a wicked and ungodly Oath, in one of the said pretended Canons, enjoined to be taken 'by all the clergy, and many of the laity of this kingdom.

VI. He hath traitorously assumed to himself a papal and tyrannical Power, both in Ecclesiastical and Temporal Matters, over his majesty's subjects in this realm of England, and other places, to the dishonour of the crown, dishonour of his majesty, and derogation of his supreme authority in ecclesiastical matters. And the said Archbishop claims the king's Ecclesiastical Jurisdiction, as incident to his episcopal and archiepiscopal office in this kingdom; and doth deny the same to be derived from the crown of England; which he hath accordingly exercised, to the high contempt of his royal majesty, and to the destruction of divers of the king's liege people in their persons and estates.

VII. That he hath traitorously endeavoured to alter and subvert God's true Religion by law established in this realm; and instead thereof, to set up Popish Superstition and Idolatry; and to that end hath declared and maintained in Speeches and printed Books divers Popish Doctrines and Opinions, contrary to the Articles of Religion established by law. He hath urged and enjoined divers popish and superstitious Ceremonies, without any warrant of law; and hath cruelly persecuted those who have opposed the same, by corporal punishment and imprisonment; and most unjustly vexed others who refused to conform thereto, by Ecclesiastical Censures of Excommunication, Suspension, Deprivation, and Degradation, contrary to the law of the kingdom.

VIII. That for the better advancing of his traitorous purpose and designs, he did abuse

the great power and trust his majesty reposed in him; and did intrude upon the places of divers great officers, and upon the right of divers of his majesty's subjects; whereby he did procure to himself the Nomination of sundry persons to Ecclesiastical Dignities, Promotions and Benefices, belonging to his majesty, and divers of the nobility, clergy, and others; and hath taken upon him the commendation of Chaplains to the king; by which means he hath preferred to his majesty's service, and to other great promotions in the Church, such as have been popishly affected, or otherwise unsound and corrupt both in doctrine and manners.

IX. He hath for the same traitorous and wicked intent, chosen and employed such men to be his own domestical Chaplains, whom he knew to be notoriously disaffected to the Reformed Religion, grossly addicted to popish Superstition, and erroneous and unsound both in judgment and practice. And to them, or some of them, he hath committed Licensing of Books to be printed; by which means divers false and superstitious Books have been published, to the great scandal of Religion, and to the seducing of many of his majesty's subjects.

X. He hath traitorously and wickedly endeavoured to reconcile the Church of England with the Church of Rome; And for the effecting thereof, hath consorted and confederated with divers Popish Priests and Jesuits; and hath kept secret intelligenc with the Pope of Rome; And by himself, his agents and instruments, treated with such as have from thence received authority and instruction. He hath permitted and countenanced a Popish Hierarchy or Ecclesiastical government to be established in this kingdom. By all which traitorous and malicious practices this church and kingdom have been exceedingly endangered, and like to fall under the tyranny of the Roman see.

XI. He in his own person, and his Suffragans, Visitors, Surrogates, Chancellors, or other officers, by his command, have caused divers learned, pious, and orthodox ministers of God's word to be silenced, suspended, deprived, degraded, excommunicated, or otherwise grieved and vexed, without any just and lawful cause; whereby, and by divers other means, he hath hindered the Preaching of God's Word, caused divers of his majesty's loyal subjects to forsake the kingdom, and increased and cherished ignorance and profaneness amongst the people; that so he might the better facilitate the way to the effecting of his own wicked and traitorous design of altering and corrupting the true religion here established.

XII. He hath traitorously endeavoured to cause Division and Discord between the Church of England and other Reformed Churches; and to that end hath suppressed and abrogated the Privileges and Immunities which have been by his majesty and his royal ancestors granted to the French and Dutch Churches in this kingdom: And divers other

ways hath expressed his malice and disaffection to these churches, that so, by such disunion, the Papists might have more advantage for the overthrow and extirpation of both.

XIII. He hath maliciously and traitorously plotted and endeavoured to stir up War and Enmity betwixt his majesty's two kingdoms of England and Scotland; and to that purpose hath laboured to introduce into the kingdom of Scotland divers Innovations both in Religion and Government; all or the most part tending to Popery and Superstition: to the great grievance and discontent of his majesty's subjects of that nation. And for their refusing to submit to such Innovations, he did traitorously advise his majesty to subdue them by force of arms: And by his own authority and power, contrary to law, did procure sundry of his majesty's subjects, and inforced the Clergy of this kingdom, to contribute toward the maintenance of that war. And when his majesty, with much wisdom and justice had made a Pacification betwixt the two kingdoms, the said Archbishop did presumptuously censure that Pacification, as dishonourable to his majesty; and, by his counsel and endeavours, so incensed his majesty against his said subjects of Scotland, that he did thereupon, by advice of the said Archbishop, enter into an offensive War against them, to the great hazard of his majesty's person, and his subjects of both kingdoms.

XIV. That to preserve himself from being questioned for these and other his traitorous courses, he hath laboured to subvert the Rights of Parliament, and the antient course of Parliamentary Proceedings; and by false and malicious slanders to incense his majesty against Parliaments. By which words, counsels, and actions, he hath traitorously, and contrary to his allegiance, laboured to alienate the hearts of the king's liege-people from his majesty, to set a division between them, and to ruin and destroy his majesty's kingdoms. For which they do impeach him of High-Treason against our sovereign lord the king, his crown and dignity.

The said Commons do farther aver, that the said William Archbishop of Canterbury, during the time in which the Crimes aforementioned were done and committed, hath been a Bishop or Archbishop in this realm of England, one of the king's Commissioners for Ecclesiastical matters, and one of his majesty's most honourable Privy Council: And that he hath taken an Oath for his faithful discharge of the said office of counsellor, and hath likewise taken the Oath of Supremacy and Allegiance. And the said Commons, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any other Accusation or Impeachment against the said Archbishop, and also of replying to the Answers that the said Archbishop shall make unto the said Articles, or to any of them; and of offering farther proof also of the premises, or any of them, or of any other Impeachment or Accusation that shall be exhib-

bited by them, as the case shall, according to the course of parliaments, require; do pray that the said Archbishop may be put to answer to all and every the premises; and that such Proceedings, Examinations, Trial and Judgment, may be upon every of them had and used, as is agreeable to law and justice.

When these Articles had been read unto me in the Upper House, and I had spoken to the Lords, in a general Answer to them, what I thought fit, as is before expressed; I humbly desired of the Lords (this being upon Friday, Feb. 26, 1640-1) that my going to the Tower might be put off till the Monday after, that so I might have time to be the better fitted for my lodging. This, I humbly thank their lordships, was granted.

[February 20, 1640-1. Ordered by the Lords in Parliament, that the lord archbishop of Canterbury his grace, shall stand committed to the Tower of London. But the pleasure of this House is, that he continue still in the safe custody of the Gentleman Usher of this house, till Monday the 1st of March 1640-1, and then that the Lieutenant receive his grace in his safe custody, until the pleasure of this House be further known; and in the mean time, Mr. Maxwell is to be responsible for him, and not to permit him to go abroad, and that the Archbishop of Canterbury and the Earl of Strafford shall not come together.]

I returned to Mr. Maxwell's custody, and that afternoon sent my steward to sir William Balfore, then lieutenant, that a lodging might be had for me with as much convenience as might be. On Monday, March 1, Mr. Maxwell carried me in his coach to the Tower. St. George's Feast, having been formerly put off, was to begin that evening. By this means Mr. Maxwell (whose office tied him to attendance upon that Solemnity) could not possibly go with me to the Tower at evening, as I desired. Therefore noon, when the citizens were at dinner, was chosen as the next fittest time for privateness. All was well till I passed through Newgate shambles, and entered into Cheapside. There some one Prentice first hollowed out; and more followed the coach, (the number still increasing as they went) till by that time I came to the Exchange the shouting was exceeding great. And so they followed me with clamour and revilings even beyond barbarity itself; not giving over, till the coach was entered in at the Tower-Gate.

[Afterwards the Lords made the following Orders:

AN ORDINANCE of the Lords and Commons, assembled in Parliament, concerning the Archbishop of Canterbury.

Die Martis, 16 Maii 1643.

"Whereas William Laud, Archbishop of Canterbury, standeth impeached in this present Parliament for High-Treason, and for divers other great offences and misdemeanors; and by reason of many great and weighty busi-

nesses he cannot yet be brought to Trial for the said Offences and Misdemeanors; and he, in respect of his said Archbishopric of Canterbury, hath power to give and collate fit Clerks to divers Parsonages, Vicaridges, Prebends, and other Ecclesiastical Promotions and Preferments; and if any of them should become void, and he left to prefer whom he please to the same, the same may prove very inconvenient, he bestowing them upon unfit and unworthy persons.—Be it therefore ordered and ordained, by the Lords and Commons in this present parliament, That in case any of the aforesaid Parsonages, Vicaridges, Prebends, or other Ecclesiastical Promotions or Preferments, now be, or shall hereafter, and before the Trial of the said Lord Archbishop, become void; That the said Lord Archbishop of Canterbury shall forbear to present or collate any person or persons thereunto, without the leave and order of both Houses of Parliament. And it is further ordered and ordained, That the said Lord Archbishop shall, from time to time, until his said Trial, present and collate such fit person or persons, to every such Parsonage, Vicaridge, Prebend, and other Ecclesiastical Preferment, as aforesaid, which now are, or hereafter before his said Trial shall become void, as by both Houses of Parliament shall be nominated and appointed. And it is further ordered by the said Lords and Commons in Parliament, that all Archdeacons, Registers, and other officers, ministers, and persons whatsoever, shall forbear to give or make any Admission, Institution, Collation, or Induction, of any person or persons whatsoever, which by the said Archbishop shall be presented in or to any such Parsonage, Vicaridge, Prebend, or other Ecclesiastical Preferment, other than such person and persons as shall be nominated and appointed by both houses of parliament, as aforesaid. And it is lastly ordered, That the Lord Archbishop, and the Churchwardens of every parish, and other officers of the Church, where any Parsonage, Vicaridge, Prebend, or other Ecclesiastical Promotions or Preferments, in the donation or gift of the said Archbishop, are; shall, within two months after the respective avoidance thereof, give notice of such avoidance to the Lord Speaker of the House of Peers, for the time being."

An Ordinance of the Lords and Commons assembled in Parliament; That all the Temporal Livings, Dignities, and Ecclesiastical Promotions, belonging unto William Lord Archbishop of Canterbury, be forthwith sequestered by and unto the Parliament.

Die Sabbati 10 Junii, 1643.

"Whereas by an Ordinance of parliament, of the 16th of May 1643, the Archbishop of Canterbury is required from time to time, until his Trial, to collate such fit persons unto any Ecclesiastical Preferment in his patronage, as shall by both houses be nominated unto him; and, in pursuance of the said Ordinance, another Ordinance of the Lords and Commons

past the 20th of the same month, requiring the said Archbishop to collate upon Edward Corbet, Fellow of Merton-College in Oxford, the rectory of Chartham in the county of Kent, void by the death of Dr. Burgrave, the last incumbent; and whereas the said Archbishop of Canterbury refuseth obedience to the said Ordinance; it is therefore ordered, and be it so ordained by the Lords and Commons in parliament, That all the Temporalities of the Archbishop of Canterbury be hereby sequestered by and unto the parliament, and William Lord Archbishop of Canterbury be suspended *'ab officio & beneficio, et omni et omnimoda jurisdictione archiepiscopali'* until he be either convicted or acquitted of High-Treason, for which he stands now accused. And whatsoever Livings, Dignities, or Ecclesiastical Promotions, in the said Archbishop's gift or collation, are, or hereafter shall be void, shall henceforth be instituted or inducted into by the Archbishop's Vicar-General, or any other having authority in his behalf, upon the nomination and recommendation of both Houses of Parliament, during the time of the suspension and sequestration aforesaid. And upon this Ordinance it is ordered, and be it so ordained by the Lords and Commons in parliament, that the said Edward Corbet be, and is hereby nominated and recommended forthwith, upon sight hereof, to be admitted, instituted, and inducted by the Vicar-General aforesaid, or any other having authority in his behalf, into the said rectory of Chartham, *'ratione Suspensionis Domini Gulielmi Archiepiscopi Cantuariensis, et Sequestrationis Temporalium Archiepiscopatus in manibus supremæ Curie'* *'Parliamenti jam existentium'*, the same belonging unto their Gift. And it is hereby further ordained by the Lords and Commons in Parliament, that during the Suspension and Sequestration aforesaid, the jurisdiction of the said Archbishop shall be executed and exercised by his Vicar-General, and other his inferior Judges and Officers, as formerly the same hath been."

On Tuesday, October 21, an Order was brought me from the Lords, dated Oct. 23, with a copy of ten Additional Articles, brought up by the Commons against me. This Order required me to make my Answer in writing by the 30th of the same month. These Articles charged me not with Treason only, as the former did, but with Treason, and other high Crimes and Misdemeanours.

[Further ARTICLES of IMPEACHMENT by the Commons assembled in Parliament, against WILLIAM LAUD, Archbishop of CANTERBURY, of High-Treason, and divers High Crimes and Misdemeanours; as followeth:

1. That the said Archbishop of Canterbury, to introduce an Arbitrary Government within this realm, and to destroy Parliaments, in the 3rd and 4th year of his majesty's reign that now is, a Parliament being then called and sitting at Westminster, traitorously and malici-

ously caused the said Parliament to be dissolved, to the great grievance of his majesty's subjects, and prejudice of this Commonwealth. And soon after the Dissolution thereof, gave divers Propositions under his hand to George then duke of Buckingham; casting therein many false aspersions upon the said Parliament, calling it a factious Parliament, and falsely affirming that it had cast many scandals upon his majesty, and had used him like a child in his minority; stiling them Puritans, and commending the Papists for harmless and peaceable subjects.

II. That within the space of 10 years last past, the said Archbishop hath treacherously endeavoured to subvert the Fundamental Laws of this Realm; and to that end hath in like manner endeavoured to advance the Power of the Council-Table, the Canons of the Church, and the King's Prerogative, above the laws and statutes of the realm. And for manifestation thereof, about 6 years last past, being then a Privy-Counsellor to his majesty, and sitting at the Council-Table, he said, 'That as long as he sat there, they should know, that an Order of that Board should be of equal force with a Law or Act of Parliament.' And at another time used these words, 'That he hoped ere long, that the Canons of the Church and the King's Prerogative should be of as great power as an Act of Parliament.' And at another time said, 'That those that would not yield to the King's Power, he would crush them to pieces.'

III. That the said Archbishop, to advance the Canons of the Church, and Power Ecclesiastical, above the law of the land, and to pervert and hinder the course of Justice, hath at divers times within the said time, by his letters, and other undue means and solicitations used to Judges, opposed and stopped the granting of his majesty's Writs of Prohibition, where the same ought to have been granted for stay of Proceedings in the Ecclesiastical Court; whereby justice hath been delayed and hindered, and the judges diverted from doing their duties.

IV. That for the end and purpose aforesaid, about 7 years last past, a Judgment being given in his majesty's court of King's-Bench against one Burley a parson, being a man of bad life and conversation, in an Information upon the Statute of 21 Hen. 8, for wilful Non-Residency; the said Archbishop, by solicitations and other undue means used to the Judges of that Court, caused Execution upon the said Judgment to be stayed; and being moved therein, and made acquainted with the bad life and conversation of the said parson, he said, 'That he had spoken to the Judges for him, and that he would never suffer a Judgment to pass against any clergyman by *nihil dicit*.'

V. That the said Archbishop about 8 years last past, being then also a Privy-Counsellor to his majesty, for the end and purpose aforesaid, caused sir John Corbet of Stoke in the county of Salop, baronet, then a justice of peace of the

said county, to be committed to the prison of the Fleet, where he continued prisoner for the space of half a year, or more, for no other cause, but for calling for the Petition of Right, and causing it to be read at the Sessions of the peace for that county, upon a just and necessary occasion. And during the time of his said imprisonment, the said Archbishop, without any colour of right, by a Writing under the seal of his Archbishoprick, granted away a parcel of the Glebe-Land of the church of Adderly in the said county, whereof the said sir John Corbet was then patron, unto Robert viscount Kilmurray, without the consent of the said sir John, or the then incumbent of the said church; which said viscount Kilmurray built a Chapel upon the said parcel of Glebe-Land, to the great prejudice of the said sir John Corbet, which hath caused great suits and contentions between them. And whereas the said sir John Corbet had a Judgment against sir James Stonehouse, kt., in an Action of Waste, in his majesty's Court of Common-Plens at Westminster, which was afterwards affirmed on a Writ of Error in the King's-Bench, and Execution thereupon awarded: yet the said sir John by means of the said Archbishop could not have the effect thereof, but was committed to prison by the said Archbishop and others at the Council-Table, until he had submitted himself unto the Order of the said Table, whereby he lost the benefit of the said Judgment and Execution.

VI. That whereas divers Gifts and Dispositions of divers sums of Money were heretofore made by divers charitable and well-disposed persons, for the buying in of divers Improvements for the Maintenance of preaching the Word of God in several Churches; the said Archbishop about 8 years last past wilfully and maliciously caused the said Gifts, Feoffments, and Conveyances made to the uses aforesaid, to be overthrown in his majesty's Court of Exchequer, contrary to law, as things dangerous to the Church and State, under the specious pretence of buying in Appropriations; whereby that pious work was suppressed and trodden down, to the great dishonour of God, and scandal of Religion.

VII. That the said Archbishop at several times, within these 10 years last past, at Westminster, and elsewhere within this realm, contrary to the known laws of this land, hath endeavoured to advance Popery and Superstition within the realm; And for that end and purpose hath wittingly and willingly received, harboured, and relieved divers Popish Priests and Jesuits; namely, one called Saucta Clara, alias, Dampport, a dangerous person and Franciscan Friar; who having written a Popish and Seditious Book, entitled, 'Deus, Natura, Gratia,' wherein the Thirty-nine Articles of the Church of England, established by act of parliament, were much traduced and scandalized; the said Archbishop had divers Conferences with him, while he was writing the said Book; and did also provide maintenance and entertainment;

for one Monsieur S. Giles, a Popish Priest, at Oxford, knowing him to be a Popish Priest.

VIII. That the said Archbishop about four years last past, at Westminster aforesaid, said, 'That there must be a Blow given to the Church, such as had not been yet given, before it could be brought to conformity;' declaring thereby his intention to be, to shake and alter the true Protestant Religion established in the Church of England.

IX. That in or about the month of May, 1640, presently after the Dissolution of the last Parliament, the said Archbishop, for the ends and purposes aforesaid, caused a Synod or Convocation of the Clergy to be held for the several provinces of Canterbury and York, wherein were made and established by his means and procurement divers Canons and Constitutions Ecclesiastical; contrary to the laws of this realm, the rights and privileges of parliament, the liberty and propriety of the subject, tending also to Sedition, and of dangerous consequence. And among other things, the said Archbishop caused a most dangerous and illegal Oath to be therein made and contrived, the tenour whereof followeth in these words:—

'That I A. B. do swear that I do approve the Doctrine and Discipline or government established in the Church of England, as containing all things necessary to Salvation; and that I will not endeavour by myself or any other, directly or indirectly, to bring in any Popish doctrine, contrary to that which is so established; Nor will I ever give my consent to alter the Government of this Church by Archbishops, Bishops, Deans, and Archdeacons, &c. as it stands now established, and as by right it ought to stand; nor yet ever subject it to the Usurpations and Superstitions of the See of Rome. And all these things I do plainly and sincerely acknowledge and swear, according to the plain and common sense and understanding of the same words, without any equivocation, or mental evasion, or secret reservation whatsoever. And this I do heartily, willingly, and truly upon the faith of a Christian; So help me God in Jesus Christ.' Which Oath the said Archbishop himself did take, and caused divers other Ministers of the Church to take the same, upon pain of Suspension and Deprivation of their Livings, and other severe penalties; and did also cause Godfrey, then bishop of Gloucester, to be committed to prison for refusing to subscribe to the said Canons, and to take the said Oath; and afterward the said Bishop submitting himself to take the said Oath, he was set at liberty.

X. That a little before the calling of the last Parliament, A. D. 1640, a Vote being then passed, and a Resolution taken at the Council-Table, by the advice of the said Archbishop, for assisting of the King in extraordinary ways, if the said Parliament should prove peevish, and refuse to supply his majesty: the said Archbishop wickedly and maliciously advised his majesty to dissolve the said Parliament, and accordingly the same was dissolved: and

present after the said Archbishop told his Majesty, 'That now he was absolved from all rules of government, and left free to use extraordinary Ways for his Supply.'

For all which Matters and Things, the said Commons assembled in Parliament, in the name of themselves and of all the Commons of England, do impeach the said Archbishop of Canterbury of High Treason, and other High Crimes and Misdemeanors, tending to the subversion of our Religion, Laws, and Liberties, and to the utter ruin of this Church and Commonwealth. And the said Commons by protestation saving to themselves the liberty of exhibiting at any time hereafter any further or other Accusation or Impeachment against the said William Laud, Archbishop of Canterbury, and also of replying to the Answer that he shall make unto the said Articles, or any of them; or offering Proof of the premises, or any other Impeachments or Accusations, that shall be exhibited by them, as the cause shall (according to the course of parliament) require: do pray that he the said William Laud, Archbishop of Canterbury, may be called to answer the said several Crimes and Misdemeanors, and receive such condign punishment as the same shall deserve; and that such further proceedings may be upon every of them had and used against him as is agreeable to law and justice.

Die Lunæ, 23 Octob. 1643.

Ordered, &c. "That the Lord Archbishop of Canterbury shall put in his Answer in writing into this House by the 30th day of this instant October, unto the particular Articles in maintenance of their former Impeachment of High Treason and divers High Crimes and Misdemeanors, brought up from the House of Commons against him, and remaining now before the Lords in Parliament."

I sent instantly by the same messenger a Petition for longer time; for means out of my Estate to fee my counsel, and bear the necessary Charge of my Trial; for Counsel, and for a Solicitor and some servants to attend my business. The Lords, I humbly thank them, gave me longer time, and assigned me Mr. Hearne, Mr. Chute, Mr. Hales; and at my Petition added Mr. Gerrard. For Money, they referred me to the Committee of Sequestrations; but delayed their Answers concerning my Servants, and the Papers of my Defence, which Mr. Prynne took from me. For though he promised me a faithful restitution of them within three or four days, yet to this day (being almost five months after) I had received but three bundles of the twenty and one which he had from me.

[To the Honourable the Lords assembled in the High Court of Parliament, the Humble PETITION OF WILLIAM LAUD, Archbishop of Canterbury,

"Humbly sheweth; That he hath received your lordships' Order of Oct. 23, 1643, with a

Copy of the Articles charged against him, and requiring him to make answer.—Most humbly prayeth, That according to an Order of that Honourable House, he may have Counsel assigned him, and that master Hearne and master Chute may be his Counsel, and may have free liberty to come unto him; and that he may have some Money out of his Estate to fee his Counsel, and defray his other Charges, he having been for this last whole year burdensome to his friends. And further, That he may have all his Papers and Books, most of which belong to his Defence, which master Prynne took from him by Order of the Lords, delivered unto him, that he may be able to answer for himself. That also he may have time and means to send for his Witnesses, which can hardly be done in the time limited: and that he may have his Servants about him, to send about his necessary occasions. And lastly, That he may have longer time, the Articles being large and many. And he shall ever pray, &c.

“WILLIAM CANT.”

Which Petition being read in the lords' house, Oct. 24, 1643, this Order was made:

Die Martis, 24 Octob. 1643.

Upon the reading of the Petition of the Lord Archbishop of Canterbury this day in the House, it is ordered, &c. “That time is given him until Monday the 6th of Nov. for the putting in his Answer in writing into this house unto the particular Articles brought up from the House of Commons, in maintenance of their former Impeachment of High Treason, and divers High Crimes and Misdemeanors against him. That master Hearne and master Chute are hereby assigned of Counsel for the drawing up of his Answer, who are to be permitted to have free access in and out to him. That this House doth hereby recommend to the Committee of Sequestrations, that the said Lord Archbishop shall have such Means afforded him out of his estate, as will enable him to pay his Counsel, and defray his other Charges. That when his lordship shall set down particularly what Papers and Writings are necessary for his Defence that should be restored unto him, their lordships will take it into their consideration. That upon his lordship's nominating who shall be his Solicitor, the lords will return their Answer. And for the Witnesses, when a day shall be appointed for his lordship's Trial, this house will give such directions therein as shall be just.”]

Friday, October 27. I petitioned again, that the Papers of my Defence being, as I was informed, in the hands of the Close Committee, might be delivered unto me; and sent my Petition, with the Order of the Lords annexed, to the Committee for Sequestrations. There many were very favourable, till Mr. Glyn was pleased to say, They were not to allow me means, and there was a known course in law, which was, that I might go on *in forma pauperis*; and so was left without any allowance out of my Estate, to fee my counsel, or supply other

wants. This succeeding so ill with me, I petitioned the Lords again on Saturday, Oct. 28, 1643, and then Mr. Dell, my Secretary, was assigned me for my Solicitor; and I was allowed two servants more to go about my business.

[Die Sabhati, 28 Oct. 1643.

Ordered, &c. “That master Hales is hereby appointed to be of Counsel with the Lord Archbishop of Canterbury, with his other Counsel already appointed for the drawing of his Answer to the Charge of the House of Commons against him. And that Master W. Dell, Richard Cobb, and master George Smith, his lordship's Servants, shall have liberty to attend the said Archbishop's several Affairs, and be permitted to come in and out unto him, as there shall be occasion.”]

And the House of Commons, by their Order, agreed to the Lords, that I should have copies of any of the Papers taken from me, but it should be at my own Charge. Wonderful favour this, and as much justice! My estate all taken from me, and my goods sold, before ever I came to hearing; and then I may take copies of my Papers at my own Charge.

On Tuesday, October 3, I humbly petitioned the Lords for Direction of my Counsel, how to carry themselves towards me and my Defence; and that they would honourably be pleased, in regard the Articles charged me with Treason and Misdemeanor, and were intermixed one with another, to distinguish which were for Treason, and which for Misdemeanor; as also for longer time to put in my Answer. The Lords upon this gave an Order, that I should have time till Nov. 13, but would declare no Opinion touching the distinguishing of the Articles, but left me to my Counsel to advise as they pleased.

[To the Right Honourable the Lords assembled in Parliament, the Humble PETITION of WILLIAM Archbishop of CANTERBURY.

“Most humbly sheweth; That your Petitioner having presented against him, by the honourable house of Commons, to your lordships, an Impeachment, intituled, ‘Further Articles of Impeachment by the Commons assembled in Parliament, of High-Treason and divers High Crimes and Misdemeanors,’ to which, by your honourable Order of the 24th of Oct. annexed, he is directed to put in his Answer in writing by Monday the 6th of Nov.; and hath thereby counsel assigned him to draw up the same:—That your Petitioner's Counsel, upon reading of the Articles, finding that as well in the frame, as the conclusion thereof, the matters of Crime and Misdemeanors are so interwoven with references to the matters thereby charged as Treason, as they cannot take upon them to distinguish them: and conceiving it not to have been your lordships intention, by their assignments that they should advise an Answer to any part of the Impeachment charged against your Petitioner as Treason

son, do forbear to advise your Petitioner's Answer to the said Articles, without some Declaration first had, which of the said Articles are intended to be a Charge of High-Treason, and which of them of Crimes and Misdemeanors; without which your Petitioner is like to be deprived of the assistance of Counsel, granted by your lordships Order.—Your Petitioner humbly beseecheth your Lordships, in this so heavy a Charge on him, from so great and honourable a body, in such a straight of time, that it may be declared which of the said Articles are intended to be Charges of Crimes and Misdemeanors only, in which your Petitioner may have the assistance of his Counsel assigned him, to advise him in his Answer thereunto: And that your lordships will be further honourably pleased to enlarge your Petitioner in the time allotted for his Answer. And your Petitioner shall pray, &c. WILLIAM CANT."

Upon which Petition, this Order was formed:

Die Martis, 31 Octob.

Ordered, &c. "That the Lord Archbishop of Canterbury shall have time to put in his Answer to the Impeachment of the House of Commons, until Monday the 13th of Nov. next. And that this House doth forbear to declare any Opinion concerning the several Articles of the said Impeachment, but leaves it to his Counsel to do and advise as his Counsel shall think most fitting.]"

My Counsel told me plainly, I might as well have no Counsel, if the Articles were not distinguished; for they were so woven one within another, and so knit up together in the conclusion, that they might refer all to Treason, and so they be suffered to give me no Counsel at all in matter of fact. Hereupon they drew me another Petition to the same effect, which I caused to be delivered Nov. 6, but it received the same Answer. Then Nov. 7, being Wednesday, I petitioned the House of Commons to the same purpose: and Nov. 8, this my Petition was read in the House of Commons; and after a short debate, the Resolution was, That they being my Accusers, would not meddle with any thing, but left all to the Order of the Lords, before whom the business was, and my Counsel's own judgment thereupon. This seemed very hard, not only to myself and my counsel, but to all indifferent men that heard it. In the mean time, I could resort no whither but to patience and God's mercy.

[Die Veneris, 10 Novemb. 1643.

Ordered, "That the Lieutenant of the Tower, or his Deputies, shall bring in safety the Lord Archbishop of Canterbury before their lordships on Monday the 13th of this instant Nov. by ten of the clock in the morning, to put in his Answer into the House to the Impeachment of the House of Commons, remaining now before the Lords in Parliament; and this to be a sufficient warrant in that behalf.]"

November 13. I appeared in the Parliament-

House according to the Order, and was at the bar. That which I spake to the Lords, was this: "That I had no skill to judge of the streights into which I might fall by my Plea which I had resolved on, being left without all assistance of my Counsel, in regard of the nature and form of the Impeachment that was against me. That yet my innocency prompted me to a ready obedience of their lordships Order, casting myself wholly upon God's mercy, their lordships justice, and my own innocency." Then I humbly desired that their Lordships Order first, and the Impeachment after might be read. This done, I put in my Answer in Writing, as I was ordered to do, and humbly prayed it might be entered. My Answer was: 'All advantages of law against this Impeachment saved and reserved to this Defendant, he pleads Not Guilty to all and every part of the Impeachment, in manner and form as it is charged in the Articles: and to this Answer I put my hand.

["The Humble Answer of WILLIAM Archbishop of CANTERBURY, to the farther Articles of Impeachment of High-Treason and divers High-Crimes and Misdemeanors exhibited against him by the Honourable House of Commons, according to Direction of an Order of this Honourable House of the 13th of Oct. last.

"All advantages of Exception to the said Articles of Impeachment, to this Defendant saved and reserved, this Defendant humbly saith, That he is not guilty of all or any the matters by the said Impeachment charged, in such manner and form as the same are by the said Articles of Impeachment charged.]"

My Answer being thus put in, I humbly besought their Honourable Lordships, "To take into their consideration my great years, being threescore and ten complete, and my memory, and other faculties, by age and affliction much decayed: my long Imprisonment, wanting very little of three whole years, and this last year little better than close Imprisonment: my want of skill and knowledge in the Laws to defend myself: the generality and uncertainty of almost all the Articles, so that I cannot see any Particulars against which I may provide myself. In the next place, I did thankfully acknowledge their lordships honourable favour, in assigning me such Counsel as I desired: But I told their lordships withal, that as my Counsel were most ready to obey their Lordships in all the commands laid upon them, so there were certain doubts arisen in them, how far they might advise me without offence; considering the charges against me were so interwoven, and left without all distinguishing, what is intended as a Charge of Treason, and what of Crime and Misdemeanor: That to remove these Doubts, I had humbly besought their Lordships twice for distinguishing, by several Petitions: That their lordships not thinking it fit to distinguish, I have without advice of Counsel put in my Plea, as their

lordships see: But do most humbly pray, that their Lordships will take me so far into consideration, as that I may not lose the benefit of my Counsel for Law in all, or any; and for Law and Fact, in whatsoever is not charged as treason, when it shall be distinguished: As still my Prayers were, that by their lordships wisdom and honourable direction, some way might be found to distinguish them; and that having (not without much difficulty) prevailed with my Counsel to attend, their lordships would be pleased to hear them speak in this perplexed business." While I was speaking this, the Lords were very attentive, and two of them took pen and paper at the table, and took Notes: And it was unanimously granted, that my Counsel should be heard; and so they were. And the Order then made upon their bearing was, that they should advise me, and be heard themselves in all things concerning Matter of Law, and in all things, whether of Law or Fact, that were not charged as Treason; and that they would think upon the distinction in time convenient.

[Die Lunæ, 13 Nov. 1643.

Ordered by the Lords in Parliament, "That the Lord Archbishop of Canterbury's Counsel shall provide themselves to advise him in point of Law, in all the Articles of the whole Charge; and for the Matter of Fact, when the cause comes to be prosecuted by the House of Commons, as there shall be need, their lordships will give further directions in due time."

On the 11th of Dec. 1643, the House of Commons made this ensuing Order:

"Ordered, That the Committee for the Trial of the Archbishop of Canterbury do meet this afternoon at two of the clock in the Star-Chamber, to prepare the Evidence against the Archbishop of Canterbury; and to summon such Witnesses as are needful, and prepare the business fit for Trial, and to acquaint the House when they are ready; and this they are to do with all convenient speed they can, and to have power to send for parties, witnesses, papers, records, &c. And the care thereof is particularly committed unto serjeant Wilde."

Wednesday at night, Jan. 3, 1643, I received an Order for my appearance, and to answer to the Impeachment against me, on the Monday following, January 8.

[Die Mercarii, 3 Jan. 1643.

It is this day ordered by the Lords in Parliament, That this House will proceed against William Laud, Archbishop of Canterbury, upon the Impeachment brought up from the House of Commons for High Crimes and Misdemeanors, on Monday morning next at ten of the clock, being the 8th of this instant Jan. 1643. At which time the said Archbishop is to prepare himself for his defence.

To the Gentleman Usher attending this House, or his Deputy, to be delivered to the Lieutenant of the Tower, or his Deputy, for the Archbishop.

Jan. 3, 1643. A Message sent from the Lords by sir Robert Rich, and Mr. Page, "The lords commanded us to put you in mind, That the Archbishop of Canterbury hath put in his Plea to the Impeachment of this House sent up to the Lords some time since, which they desire you to take into consideration what is fit to be done in it."

Jan. 5. The House of Commons desired the Lords to appoint a Committee to examine some Witnesses upon Oath, against the Archbishop, in the presence of the Committee of the Commons; which was granted.]

This Summons seemed sudden, after so great an intermission; yet I could not petition for more time, till Saturday, Jan. 6, because, as the Messenger told me, the House sat not again till then. Then I petitioned for more time, in regard my Counsel were not in town; and I had time given till Tuesday, Jan. 16, and that day set perpetually.

[To the Right Honourable the Lords assembled in the High Court of Parliament, the humble PETITION of WILLIAM LAUD, Archbishop of CANTERBURY, Prisoner in the Tower,

"Humbly sheweth; That your Petitioner having received your Lordships command, by your honourable Order of the 3d of this instant January, annexed, to attend and answer the Impeachments against your Petitioner, from the honourable House of Commons, on Monday the 8th of this instant January, which is but five days distance, and at a time when two of his three Counsel assigned are out of town, and your Petitioner's Witnesses residing in several remote places, cannot be summoned in so short a time, nor willing happily to come upon their summons, without warrant from your lordships:—Your Petitioner's most humble suit to your lordships is, That you will honourably vouchsafe him some more convenient time to send for his Counsel and Witnesses, to testify in the Matters of Fact charged against him; and withal, to grant the Petitioner your honourable Order, to command the Witnesses summoned to attend at the time by your lordships to be appointed. Which his humble request your Petitioner had sooner presented to your Lordships, but that no sitting hath been (as your Petitioner is informed) until this day, since your honourable Order in this behalf made known to him. And your Petitioner shall pray, &c. "WILLIAM CANT."

Sabbati, 6 Jan. 1643.

"Whereas the House formerly appointed Monday, being the 8th of this instant January, 1643, to proceed against William Laud, Archbishop of Canterbury, upon the Impeachment brought up against him from the House of Commons for High Treason and High Crimes and Misdemeanors; upon reading the Petition of the said Archbishop, it is this day ordered by the Lords in Parliament, to the end that the Counsel and Witnesses of the said Arch-

bishop may have competent time to attend the hearing of the Cause, That this House will re-spite the Proceedings against the said Archbishop, upon the said Impeachment, until Tuesday the 16th of this instant Jan. 1643, at ten of the clock in the morning. At which time the said Archbishop is peremptorily appointed to provide his Witnesses, and prepare his Defence unto the said Impeachment.

"To the Gentleman Usher, &c."]

Notwithstanding the shortness of this time, my Counsel being out of town, as not expecting it, I was on Sunday, Jan. 7, ordered again to appear in Mr. Smart's suit the next day. The Warrant bare date a fortnight before; yet partly to sanctify the Sabbath, and partly to shew his great civility to me in giving me warning, I was not served with it till Sunday night at seven of the clock. The next morning I went to Westminster, as I was commanded: but I was sent back, and not so much as called upon. So, beside the charge I was at, that day was lost and taken from me and my business, as short time as I had given me.

Then Tuesday came on January 16. And whereas I was ordered to appear at the Lords House at nine in the morning, I was by another order put off till one in the afternoon.

[Die Lunæ, 15 Jan. 1643.

"It is this day ordered by the Lords in Parliament, that the Lieutenant of the Tower of London, or his deputy, shall bring in safety the Archbishop of Canterbury before their lordships, on Tuesday the 16th this instant January, by one of the clock in the afternoon; at which time this House will proceed against the said Archbishop upon the Impeachment brought up from the House of Commons against him for High Treason, and High Crimes and Misdemeanors, and this to be a sufficient Warrant in that behalf." Then I appeared.

[About three o'clock that afternoon the Lords sent down this Message to the House of Commons.

16 Jan. 1643.

A Message from the Lords, by sir Robert Rich and Mr. Page, to acquaint the House, That they are ready to bear the Charge upon the Impeachment against the bishop of Canterbury.

Upon this Message, the Committee of the House of Commons, appointed to manage the Evidence against him, went up to the Lords House. And then the Archbishop being brought to the bar, after he had there kneeled a little space, was commanded to stand up. Which ceremony ended,]

The Committee, that were to press the Evidence against me, began to proceed upon the former general Articles, as well as upon the latter. But to the first Articles I had never been called to answer, nor ever joined issue. Upon this, there was much looking one upon another, as if they meant to ask where the failure was.

[Hereupon Mr. Maynard spake to the Lords to this effect:

MR. MAYNARD'S Speech on this Occasion.

"My lords; It now appears to your lordships, how unwilling the Archbishop is, out of consciousness of his own guilt, to come to his Trial, that in all this space, from his first Impeachment, he hath not so much as put in any Answer to the original Articles, though he had long since counsel assigned him for that purpose. My Lords, this is none of the Commons fault, but his own; For your lordships well know, that the Commons can take no notice what is done in the house of peers in a parliamentary way, but by a Message from your lordships, who, after our Articles exhibited, were to call upon the Archbishop for an Answer to them. And your Lords sending us several Messages heretofore, that the Archbishop had put in his Answer to the Articles, and that you were ready to hear our Charge against him, and appointing this day for his Trial, the Commons thereupon conceived that he had formerly put in his Plea and Answer, in due form, to all their Articles: But the contrary now appearing both to your lordships and us, it is impossible for us to proceed at this time on his Trial, there being no issue joined upon the Original Articles, for want of an Answer to them: and to proceed upon the Additionals before any Answer given to the Originals, will be very preposterous. Wherefore we humbly pray your lordships, to order that the Archbishop may forthwith put in his Answer both to the Original and Additional Articles, by the advice of his counsel, or otherwise, in such a sort as he will stand to it; And then we shall without any delay join issue with him, proceed on his Trial and Evidence against him, when your lordships shall appoint."]

But by this means there could not then be any Proceeding. So I was there peremptorily ordered to put in my Answer on Monday, Jan. 22, both to the original and additional Articles, and in writing.

[The Archbishop desired the Lords that he might advise with his Counsel, whether the Articles were certain and particular enough to be answered unto; and that if their Lordships should over-rule him to put in his Answer to them, he might have convenient time to do it.

Upon this all being commanded to withdraw, the Lords, after some short debate among themselves, and upon reading the Archbishop's Petition to have Mr. Gerrard of Grays-Inn assigned for his Counsel, to join with those formerly assigned him, made this ensuing Order;

Die Martis, 16 Jan. 1643.

"Upon the reading the Petition of William Archbishop of Canterbury, it is this day ordered by the Lords in parliament, That Mr. Richard Gerrard of Grays-Inn be added to the former Counsel assigned to the said Archbishop, to be likewise of his counsel. It is also ordered by the Lords in Parliament, That William Archbishop of Canterbury shall put in

his Answer in writing into this House, to the first and further Articles of Impeachment brought up from the House of Commons against him, by Monday morning next peremptorily; and that the same Counsel formerly assigned him shall be of counsel with him."

On the 19th of January the Archbishop sent this Petition to the Lords.

To the Right Hon. the Lords assembled in Parliament, the humble PETITION of William Archbishop of Canterbury, Prisoner in the Tower.

"Sheweth; That whereas your Petitioner having formerly answered the particular Articles exhibited against him by the honourable House of Commons; and now by your Lordships Order of the 16th of this instant, is commanded to put in his Answer to the first and further Articles of Impeachment brought up against him by Monday morning next; for the doing whereof his former counsel is assigned him;—That your Petitioner having advised with his Counsel concerning the first Articles, which were exhibited now almost 3 years since, finding upon Perusal and debate of the same, that the said former Articles are such that no Answer can be made thereunto, nor your Petitioner in any wise enabled to prepare for his Defence of the same, as they now stand;—That inasmuch as the said Articles of Impeachment import no less than a Charge of High-Treason; and forasmuch as your Petitioner is by his counsel informed, that, especially in cases of Life, the Defendant is allowed to offer to the Court, where the same depends, his Exceptions by his Counsel before any Plea pleaded;—Your Petitioner most humbly beseecheth your Lordships to appoint a day for the hearing of your Petitioner's Counsel concerning the same. And your Petitioner shall pray, &c. WILLIAM CANT.]

At this day and time I appeared, as I was ordered to do; but could not obtain of the lords either to take my former Answer off from the file, if I must put in another; nor to distinguish the Articles, which were Treason, and which Misdemeanour; nor leave for my Counsel to speak to the generality and uncertainty of the original Articles; which they professed were such, as no man living could prepare Answer for. But I must put in my Answer presently, or be taken *pro confesso*. So in these straits I put in my Answer to both Articles.

The humble ANSWER of WILLIAM Archbishop of CANTERBURY, to the first and farther Articles of Impeachment brought up by the Honourable House of Commons against him, and by Order of the right hon. the Lords in Parliament of the 16th of this instant directed to be put in.

"As to the 13th Article of the said first Articles, and the matters therein charged, and all matters or things in the same, or any of the rest of the Articles contained, which concern

any act of hostility, whether between the king and his subjects, or between subject and subject, or which may be conceived to arise upon the coming of any English Army against Scotland, or the coming of the Scottish Army into England; or upon any action, attempt, assistance, counsel, or device, having relation thereunto, and falling out by the occasion of the late Troubles, preceding the late conclusion of the Treaty, and return of the Scottish Army into Scotland: This Defendant saith, That it is enacted by an act made during the sitting of this present Parliament, that the same, and whatsoever hath ensued thereupon, whether trenching upon the laws and liberties of the church and kingdom, or upon his majesty's honour and authority, in no time hereafter may be called in question, or resented as a wrong, national or personal; and that no mention be made thereof in time coming, neither in Judgment, nor out of Judgment: but that it be held and reputed, as though never such things had been thought or wrought; as by the said Act may more at large appear: With this, That this Defendant doth aver that he is none of the persons excepted by the said Act, or the said offences charged upon this Defendant any of the offences excepted by the said act.

"And as to all the rest of the said first and farther Articles, this Defendant, saving to himself all advantages of Exception to the said Articles, humbly saith, He is not guilty of all, or any of the matters by the said Articles charged, in such manner and form as the same are by the said Articles charged against him.

[The same day the Lords, by sir Robert Rich and Mr. Page, sent down this Answer of the Archbishop's to the House of Commons; which was read, and ordered to be referred to the Committee appointed to manage the Evidence against the said Archbishop, and accordingly delivered to serjeant Wilde.]

And it was further the same day, ordered by the Commons, That the said Committee appointed to manage the Evidence at the Trial of the Archbishop of Canterbury do peremptorily meet this afternoon, at three of the clock, in the Court of Wards, upon the distribution of the parts of the Evidence.]

All February passed over, and Mr. Prynne not yet ready; he had not yet sufficiently prepared his Witnesses. But on Monday, March 4, an Order passed to call me to the House, to answer my Charge of High-Treason, on Tuesday March 12, following.

[Die Lunæ, 4 Martii, 1643.]

A message to be sent to the Lords to desire them to appoint a day for the Trial of the Archbishop of Canterbury. Mr. Serjeant Wilde went up to the Lords, to appoint a day for the Trial, and brings Answer, That the Lords have appointed to-morrow seven-night for the Trial of the Archbishop of Canterbury.

For which purpose the Lords made the following Order:

Die Lunæ, 4 Martii, 1643.

Ordered, "That the Archbishop of Canterbury shall appear before their lordships on Tuesday the 12th of this instant March, at nine of the clock in the morning. At which time this House will proceed against the Archbishop upon the first and further Articles of Impeachment, brought up from the House of Commons against him, for High-Treason, and High Crimes and Misdemeanors: whereof the said Archbishop is hereby to take notice, and provide himself accordingly."

And on Saturday March 9, I received a Note from the Committee which were to press the Evidence against me, what Articles they meant to begin with; which had a shew of some fair respect. But the generality and uncertainty of the Articles was such, as rendered it a bare shew only; no Particular being charged, concerning which I might provide for any Witnesses or Counter-proof.

[After this, the Archbishop petitioning the Commons House, That sir Henry Mildmay, a member thereof, might be examined as a witness for him at his Trial; this order was thereupon conceived.

9 Martii, 1644.

"The humble Petition of William Archbishop of Canterbury, desiring that sir Henry Mildmay may be examined as a Witness in his business, he being to come to his Trial on Tuesday next, was this day read; and it is ordered according to his Petition, That he shall be examined as a Witness at the Trial of the said bishop accordingly. It was likewise then ordered, That divers Members of the House of Commons shall be examined as Witnesses against him; and that the Lords be moved by serjeant Wilde, that some Members and Attendants of the Lords House be examined at the Archbishop's Trial. And that it be referred to the Committee of Sequestrations, to consider of some convenient recompence for such Clerks, Solicitors, and others, as have been or shall be employed in the transcribing of Breviats, and other services done by them to the Committee for the bishop of Canterbury's Trial."

And now being ready to enter upon the Hearing and the Trial itself, I hold it necessary for me to acquaint the Reader with some general things before that begin: partly to the end he may see the course of this Trial, and the carriage which hath been in it; and partly to avoid the often and tedious Repetition, which else must necessarily be of some of them; and especially, that they may not be mingled either with the Evidence, or my Answers; to wit, to interrupt the current, or make any thing more obscure.

1. The Committee appointed by the House of Commons to manage and press the Evidence against me were, serjeant Wilde, Mr. Browne, Mr. Maynard, Mr. Nichols, Mr. Hill. But none spake at the bar but the first four. Mr.

Hill was Consul *Bibulus*; Mr. Prynn was trusted with the providing of all the Evidence.

2. Mr. Prynn took to him two young men to help to turn his Papers, and assist him; Mr. Grice and Mr. Beck, Mr. Grice was son to Mr. Thomas Grice, fellow of St. John Bapt. College in my time, and after benefited near Stanes.

3. And though my hopes, under God, were upon the Lords; yet when my Trial did come on, it did somewhat trouble me to see so few Lords in that great house: For at the greatest presence that was any day of my hearing, there were not above 14, and usually not above 11 or 12. Of these one third part, at least, each day took, or had occasion to be gone before the Charge of the day was half given. I never had any one day the same Lords all present at my Defence in the afternoon, that were at my Charge in the morning; some leading Lords scarce present at my Charge four days of all my long Trial, nor three at my Defence; and which is most, no one Lord present at my whole Trial but the right hon. the lord Gray of Werk, the Speaker, without whose presence it could not be a House. In this case I stood in regard of my honourable Judges.

4. When my Hearing came on, usually my Charge was in giving till almost two of the clock. Then I was commanded to withdraw: And upon my humble Petition for time to answer, I had no more given me than till four the same afternoon; scarce time enough advisedly to peruse the Evidence: My Counsel not suffered to come to me till I had made my Answer, nor any friend else, but my Solicitor Mr. Dell, to help to turn my Papers; and my Warder of the Tower to sit by to look to this. And this was not the least cause why I was at first accused of no less than Treason, "Ne quis necessarium juvaret periclitantem, majestatis crimina subdebantur;" (Tacit. l. 3, Annal.) as it fell out in *Silvanus's* case, who had more guilt about him (yet not of Treason) than (God be thanked) I have, but was prosecuted with like malice, as appears in that Story." At four o'clock, or after, the house sat again, and I made my Answer: and if I produced any Witness, he was not suffered to be sworn; so it was but like a testimony at large, which the Lords might the more freely believe, or not believe, as they pleased. After my Answer, one or more of the Committee replied upon me. By that time all was done, it was usually half an hour past seven. Then in the heat of the year (when it overtook me) I was presently to go by water to the Tower, full of weariness, and with a shirt as wet to my back with sweat, as the water could have made it, had I fallen in. Yet I humbly thank God for it, he so preserved my health, as that though I were weary and faint the day after, yet I never had so much as half an hour's head-ach, or other infirmity, all the time of this comfortless and tedious Trial.

5. Now for the Method which I shall hold in this History of my Trial, it shall be this: I

will set down the Evidence given on each day by itself, and my Answer to it. But whereas all the Evidence was given together, and so my whole Answer after; to avoid all looking back and trouble of turning leaves to compare the Answer with the Evidence, I will set down each particular Evidence and my Answer to it, and so all along, that the indifferent Reader may, without farther trouble, see the force of the one, and the satisfaction given in the other, and how far every particular is from Treason. And if I add any thing to my Answers in any place, either it is because in the shortness of time then given me to make my Answer, it came not to my present thoughts; or if it did, yet I forbore to speak it with that sharpness, holding it neither fit nor safe, in my condition, to provoke either my Accusers, or my Judges. And whatsoever is so added by me in either of these respects, the Reader shall find it } thus marked in the margin, as here it stands { in this :"

6. Nor did I wrong Mr. Prynne, where I say, "That for all the haste to put in my Answer Jan. 23, he could not make this broken business so soon ready against me :". For it is well known he kept a kind of School of Instruction for such of the Witnesses as he durst trust, that they might be sure to speak home to the purpose he would have them. And this an Uter Barrister, a man of good credit, knows; who, in the hearing of men beyond exception, said, "The Archbishop is a stranger to me; but Mr. Prynne's tampering about the Witnesses is so palpable and foul, that I cannot but pity him, and cry shame of it." When I heard this, I sent to this gentleman, to know if he tendered my Case so far as to witness it before the Lords. The Answer I received was, That the thing was true, and that very indignation of it made him speak; but heartily prayed me I would not produce him as a Witness; for if I did, the times were such, he should be utterly undone: And it is not hard to guess by whom. Upon this I consulted some friends; and upon regard of his safety on the one side, and my own doubt, lest it forced to his undoing, he might through fear blanch and mince the truth to my own prejudice who produced him, I forbore the business, and left Mr. Prynne to the Bar of Christ, whose mercy give him repentance, and amend him. But upon my Christianity this story is truth.

#### *The First Day of my Hearing.*

And now I come to Tuesday, March 12,

\* Note, That where entire set Speeches were made by the Archbishop, although spoken by him at the bar, the same Marks are put to them. But wheresoever those marks are found in the History, from the second to the last day of the Trial inclusive, the Words to which they are affixed were not spoken at the bar at that time, but either added afterwards by the Archbishop at the Recapitulation of his Answer, or inserted in writing the History. H. W.

1643, the day appointed for my Trial to begin: and begin it did.

[The Archbishop about three of the clock in the afternoon was brought by the Lieutenant of the Tower and Usher of the Black Rod to the bar in the Lords House; where after he had kneeled a little space, the lord Gray of Werk, Speaker *pro tempore*, commanded him to rise up. And the Committee of the House of Commons, appointed to manage the Evidence at his Trial, demanded that the several Articles of their Impeachment against him might be read. Whereupon one of the Clerks of the Lords House read both the Original and Additional Articles before mentioned, and after that his Answer, Plea, and Demurrer thereunto.

The Archbishop then desired the Lords, that the House of Commons might give in all their Charge and Evidence to all the Articles against him together, before he should be put to give his Answer to any particular Charge, because he was ancient, his Memory very short, and the Articles general; and that he might answer all his Charge together, and not each day's Evidence by piece-meal. To which, on the behalf of the Commons, it was answered by Mr. Maynard,

"1. That if the Archbishop's Memory was so bad, it would be far worse for him to charge it with answering many particulars, and the whole Evidence against him together, than to answer every particular Charge each day, as it should be given in against him, whilst it was fresh in memory. 2. That it might and would be a great inconvenience to have Witnesses cross-examined upon other days than those whereon they gave in their testimony against the prisoner. 3. That the Lords themselves would find it difficult to pass their Judgment upon all the Charge together, without hearing his punctual Answer to every particular Proof as it should be given in Evidence, whilst it was fresh in their memories. 4. Because else all the Witnesses, which were very many, must of necessity attend, and be kept in town from the first to the last day of his Trial; which would be a very great charge and inconvenience. 5. In the earl of Strafford's Case, this very parliament, he was put to answer every day to the particular Evidence given against him on the same day."

Upon which Reasons the House of Peers ordered, that the Archbishop should make his particular Answer to every particular Charge on the same day it was given in against him.

Then the Archbishop desired, that the House of Commons would sever the Articles which were Treason from those other Articles which were matter of Crime and Misdemeanour only; that so he might know which of them were Treason, and which not. Hereto Mr. Maynard answered, That this they might not do, because they were now only to try the matter of fact, not law; and because all the Articles taken together, not each or any particular Article by itself, made up the Treason where-

with he was charged; to wit, his endeavours to subvert and destroy Religion, the fundamental Laws of the land, and government of the realm, and to bring in Popery and an arbitrary tyrannical government against law.]

When I was come, and settled at the bar, Serjeant *Wilde* made a solemn Speech for Introduction. I had a character given me before of this gentleman, which I will forbear to express; but in this Speech of his, and his future proceedings with me, I found it exactly true. His Speech my decayed memory cannot give you at large; but a Skeleton of it I here present, according to such Limbs as my Brief Notes then taken can now call to my memory.

He began, and told the Lords, That the children which I had travailed with, were now come to the birth; and that my actions were foul, and my Treason so great, as that the like could not be read in any history; nay, so great, as that *nullus poeta fingere*, no poet could ever feign the like. And that if all Treason were lost, and not to be found in any author what it is, it might be recovered and found out in me and my actions; with divers pieces of Latin sentences to this effect. [And though these high and loud expressions troubled me much at the present, yet I could not but think, that in this Canto of his he was much like one of them which cry up and down the City, "Have you any old ends of Gold and Silver?"]

After this, he proceeded to give Reasons why I was not sooner proceeded against, having now lain by it above 3 years. The first Reason he gave was the Distractions of the Time. [And they indeed were now grown great; but the distractions which were now, can be no argument why I was not proceeded against at the beginning of the Parliament, when things were in some better quiet.] His second Reason was the death of some persons\*. [But this could be no Reason at all: For if the persons he speaks of were Witnesses against me, more might die, but the dead could not be made alive again by this delay; unless Mr. Serjeant had some hope the Resurrection might have been by this time, that so he might have produced them. And if the persons were members of the House of Commons, as all men know Mr. Pym was in the Chair for preparation of my Trial; then this is known too, That Mr. Pym came up to the Committee of Lords full of great hopes to prove God knows what against me. The persons to be examined were William lord bishop of London, and Matthew lord bishop of Ely, my very worthy friends, and men like to know as much of me as any men. A Lord then present told me, there were some 18 or 19 Interrogatories, upon which these Bishops were to be examined against me, con-

cerning my Intercourse with Rome; but all were built upon the first, which was their knowledge of the man who, it seems, was thought to be my chief agent in that secret. But both the Bishops denying upon their oaths that they, or either of them, ever knew any man, all the rest of the Interrogatories, what relations he had to me, and the like, must needs fall to nothing, as they did. And the Lord told me farther, he never saw Mr. Pym, and the rest, so abashed at any thing in his life. After this Mr. Pym, as it is well known, gave over that Chair, despairing to do that against me which was desired.] His third Reason was a good large one, and that was other Impediments. [And that is true; some Impediments there were, no doubt, or else I had come sooner to hearing. And, as I conceive, a chief Impediment was, that there was not a man whose malice would make him diligent enough to search into such a forsaken business, till Mr. Prynne offered himself to that service. For I think I may be confident, that that honourable and great house would not seek any man out of their own body for any such employment, had not suit some way or other been made for it.]

After these Reasons given for the delay of my Trial, he fell upon me again as foul as at first; as that I was the Author of all the Extravagancies in the Government, and of all the Concussions in the state; That the quality of my person aggravated my crime: That my abilities and gifts were great, but that I perverted them all; and that I was guilty of Treason in the highest altitude. [These were the Liveries which he liberally gave me; but I had no mind to wear them; And yet I might not desire him to wear this cloth himself, considering where I then stood, and in what condition.]

This Treason in the Altitude, he said, was in my endeavour to alter the Religion established by law, and to subvert the Laws themselves: And that to effect these, I left no way unattempted. For Religion, he told the Lords, That I laboured a reconciliation with Rome; That I maintained Popish and Arminian Opinions; That I suffered Transubstantiation, Justification by Merits, Purgatory, and what not, to be openly preached all over the kingdom; That I induced superstitious Ceremonies, as Consecrations of Churches, and Chalice, and Pictures of Christ in Glass-windows; That I gave liberty to the prophaneation of the Lords-Day; That I held intelligence with Cardinals and Priests, and endeavoured to ascend to Papal dignity; Offers being made me to be a Cardinal. [And for the laws, he was altogether as wild in his assertions, as he was before for Religion; And if he have no more true sense of Religion, than he hath knowledge in the Law (though it be his profession), I think he may offer both long enough to sale, before he find a chapman for either.] And here he told the Lords, That I held the same method for this, which I did for Religion. [And surely that was to uphold both, had the kingdom been

\* The Death and Dispersion of our Witnesses, the loss of some of our Members, who have been employed and taken pains in this business. So *Wilde's Speech apud Prynne*. p. 51.

so happy as to believe me.] But he affirmed, with great confidence, That I caused Sermons to be preached in Court to set the king's Prerogative above the Law, and Books to be printed to the same effect; That my actions were according to these. Then he fell upon the Canons, and discharged them upon me. Then, that I might be guilty enough, (if his bare word could make me so) he charged upon me the Benevolence, the Loan, the Ship-Money, the illegal pulling down of Buildings, Inclosures; saying, That as Antichrist sets himself above all that is called God; so I laboured to set the king above all that is called law. And after a tedious stir he concluded his Speech with this, That I was like Naaman the Syrian, a great person (he confessed), but a leper. [So ended this noble Celesteus.]

[Here follows Serjeant WILDE's Speech entire.

"My Lords; This great cause of the Archbishop of Canterbury, after a long and painful travail, is now come to the birth; of which it may be truly said, as it was in a like case; 'Reptum est hodierno die facinus, quod nec Poeta fingere, nec Illustrio sonare, nec Mimus imitari potuerit.'—For if all the Oppressions, all the pernicious practices and machinations, which have been in each time to ruin our Religion, Laws, and Liberties, were lost, I think here they might have been found and drawn out again to the life. So that your lordships, who have been the great assertors of our Liberties, and stood so fast to the rules and principles of your noble progenitors, (which others have ignobly deserted) may, after a long conflict with so many great and matchless difficulties, say now as a great commander once did upon an extraordinary danger, 'Tandem par animo meo periculum video.' Here is a cause proportionable to yourselves, apt and proper for the justice and power of this honourable court.

"Had they been faults of common frailty, error, or incogitancy, which this man hath committed, we should gladly have stepped back, and cast a cloke over them; but being so wilful, so universal, so destructive to the laws of God and man, so comprehensive of all the evils and miseries which now we suffer, the sin would lie upon our own heads, if we should not call for justice. Which that it hath been so long uncalled for, (not deferred or delayed) I suppose no man will think strange, who considers the pretent distractions, the death and dispersion of our Witnesses, the loss of some of our Members who have been employed and taken pains in this business, the multitude of diversions we have had, and have daily, occasioned by the acts and influences of this meteor.

"But the Truth survives, and matter enough survives; so copious and so full of variety, that if all the particulars should be examined, for his three years Imprisonment, which he complains of, there would be three years time of Trial and Hearing of the heavy Charge that lies against him. A Charge of High Treason: Treason in all and every part: treason in the

highest pitch and altitude. For what greater Treason can there be, than to betray the whole realm, and to subvert the very foundations, leaving nothing for posterity but a curse upon him that shall go about to build again?

"That which of itself is so heinous, is much more enhanced and aggravated by the quality of the person, a Churchman, a great Prelate, a man in great trust, place, and authority in Church and Commonwealth. A man endued with so great gifts of nature, and so many of grace and favour from his majesty; and for all these to be perverted to a contrary end, even to the destruction of the public, and the ruin of the womb that bare him, how deep a dye do these impose upon this foul crime!

"How Churchmen in all ages, as hath been often observed, should come to be the archlest Seedsmen of Mischief, and principal actors in all the great distractions and alterations that have happened, is a destiny that may seem strange. But the Reason is, 'Ex bono Theologo malus Medicus,' their intermeddling with temporal things and matters heterogeneous to their Calling, wherein God is pleased to smite them with blindness, and to infatuate their counsel. Whereof a perfect pattern we have in this great Prelate; who, by abusing his profession, and making the business of State the customary subject of all his endeavours, became the Author of all the illegal and tyrannical Proceedings in the Star Chamber,\*

\* Hume (note A to vol. 7), says, "That Laud's severity was not extreme, appears from this fact, that he caused the Acts or Records of the High Commission Court to be searched, and found that there had been fewer suspensions, deprivations, and other punishments by three, during the seven years of his time, than in any seven years of his predecessor Abbot." If it be admitted that the fact of the comparative numbers of punishments is sufficiently established (the authority is *Troubles and Trials of Laud*, p. 164), it may yet be reasonably questioned, whether this proves any thing as to the comparative severity of the two Archbishops. Abbot is not now before us, but that Laud's severity was extreme is abundantly proved by the barbarous Sentences pronounced by him in the Star Chamber recorded in this work. See also Felton's Case, vol. 3, p. 371. It is not in human nature, that a man who was known zealously to have concurred in and promoted such cruelties, should escape popular detestation. It is observable, that lord Clarendon, in setting forth the causes of the deserved odiousness of lord Cottington (1 Hist. of the Rebellion, 151), omits to mention that he was the man, who, in the Star Chamber, proposed the high fine on the bishop of Lincoln, the severe Sentence of removal from his office, and a fine of 1,000*l.*, upon Sherfield (ante, v. 8, p. 519), and the barbarous sentences against Prynne, Bastwick and Burton (ante, v. 3, p. 711.) In lord Cottington's Sentence against Prynne, the ordering the dock to be burned by the hang-

High Commission Court, and other Courts; of all the Innovations in Doctrine and Discipline; of the suppressing of godly Ministers and Preaching; of the advancing of others, who were the promoters of Popery and Arbitrary Power: and, indeed, of all the concussions and distractions in Church and State, whereby Religion hath been jostled out, laws and parliaments trodden down with contempt.

"For Matter of Religion, surely those times were happy, when by the magnanimity of princes, and the wisdom and piety of our predecessors, the Antichristian yoke of popery was shaken off.—And now after so many bloody Massacres in France, such fiery persecutions here in queen Mary's days, so many treacherous Conspiracies in time of queen Elizabeth, that execrable and horrid Powder-Plot in the time of the late king James, such streams and rivers of blood in Germany and Ireland, and other parts of the Christian world ever since, by those restless and cruel Firebrands of all mischief: for any man now to go about to rebuild these Walls of Jericho, and to reduce us to those rotten principles of error and darkness, how can it be expected better than that the people should be even ready to stone him, as they did him that did but act the part of Belshazzar in Rome?

"But to avoid this danger, he conveys this poison in a gilded pill, with baits and pretences of Reconciliation; a pleasing snare, 'Laqueus Diaboli ad miserorum animas ad infernum detrudendas.' A bead-roll of particulars might be recited, wherein this Reconcilement was to be wrought in points of Free-Will, Merits, Justification, Universal Grace, Purgatory; and, in effect, all the rest. To draw on these, there must be an introducing of Popish Ceremonies in all the particulars contained in the Mass-Books, and Pontificals themselves: and to make way for these, the Book of Sports must be published, and pressed beyond the king's intention or declaration, which was but a civil command: But he subjoins Ecclesiastical Penalties, even the sharpest, Suspension, Deprivation, and the like; these executed on divers good and godly men with a high hand. Thus a liberty proclaimed not to Captives, but to

man, was a circumstance, introduced for the first time. Lord Clarendon speaks, (1 Hist. Reb. 64), contemptuously of secretary Coke, of whom he says, among other slighting expressions, that "his cardinal perfection was industry, and his most eminent infirmity, covetousness." Coke, however, seems to have possessed a much milder and more conciliating temper than most of king Charles's courtiers; and his speeches in the Star Chamber in the Cases of Sherfield, and of Prynne, for the Histriomastix, seem to have been the most judicious and the best which were delivered on those occasions. In the Case of Chambers, (ante, vol. 3, p. 873), Laud supported the imposition of a fine, six times as great as that which had been proposed by Cottington.

profane Caitiffs; this day set apart by God *ab eterno*, exposed and prostituted to all looseness and irreligion, and that by a law; this lamb taken out of his bosom.

"Jehosaphat sends Priests and Levites into all the Cities and Tribes to instruct them: This Prelate sends Declarations and Injunctions to corrupt them, and to extinguish the lamp and light of Religion. In the former Acts, he destroys the Protestants; in this, Religion itself. In the one, he leaves Superstition; in the other, nothing but Atheism and Profaneness: in the one, he destroys Presbyters, as did Dioclesian; in the other, Presbyterium; as did the apostate Julian. Yet to shew his love to Religion, (the Pope's only) he holds correspondence with those of Rome, cardinals Barberino, Panzani, Con, Rosetti, the Pope's nuncios, sir Toby Matthews, Saint Clara, Saint Giles, the most dangerous and desperate Jesuits, and many others *ejusdem Farinae*. And by all these steps and rounds he makes a ladder for himself to climb up to papal dignity; in example of Anselme, whom (though famous for his contumacy and rebellion) yet he calls him his worthy predecessor, (as was Becket also) and is contented to take upon him the plenitude of power, the title of Holiness, of Archangel of this Church, the Lineal Successor of Gregory the First, rather of Gregory the Seventh; and for all this was well worthy to have these great offers made him, recorded in his own Memorials, by those that had ability to perform it (viz.) a Cardinal's Cap. But such was his modesty to forbear it; because, though Rome be a true visible Church in his opinion, yet something dwelt with him that hindered it for a time, to wit, I suppose his dwelling here.

"For his attempts against the Laws, the Subjects' birth-right, and the Rights of Parliaments, their chief support and refuge, how little regard he had to them; how much he did despise and abhor them, making it his ambition to prefer the contemnners and abusers of them, and to set up his Canons and Constitutions above them, imposing of unjust and unlawful Oaths, Exactions, Monopolies, all sorts of oppressions, stopping of Prohibitions and Course of Justice, rescinding of Acts of Parliament, advancing of Proclamations, and all kind of Arbitrary Power above the laws of God or Man; is fully expressed in the Articles, and will more fully appear in the Evidence. To conclude, Naaman was a great man; but he was a leper. This man's leprosy hath so infected all, as there remains no other cure but the sword of justice; which we doubt not but your Lordships will so apply, that the Commonwealth shall yet live again and flourish."

I was much troubled to see myself, in such an honourable assembly, made so vile: yet seeing all men's eyes upon me, I recollected myself, and humbly desired of the lords two things: "One, That they would expect Proof, before they give up their belief to these loud, but loose assertions: especially since it is an easy thing for men so resolved, to convictate,

instead of accusing; when as the rule given by Optatus holds firm, "*Quum intenditur Crimen*,"\* when a crime is objected, (especially so high a crime as this charged on me) it is necessary that the Proof be manifest, which yet against me is none at all. The other, That their Lordships would give me leave, not to answer this gentleman's Particulars, (for that I shall defer till I hear his Proofs) but to speak some few things concerning myself, and this grievous impeachment brought up against me."

Which being yielded unto, I then spake as follows :

" My Lords; My being in this place, and in this condition, recalls to my memory, that which I long since read in Seneca, "*Tormentum est, etiamsi absolutus quis fuerit, causam dixisse*."† It is not a grief only, no, it is no less than a torment, for an ingenuous man to plead criminally, much more capitally, at such a bar as this; yea, though it should so fall out, that he be absolved. The great truth of this I find at present in myself: and so much the more, because I am a Christian; and not that only, but in Holy Orders; and not so only, but by God's grace and goodness preferred to the greatest place this Church affords: and yet now brought, *causam dicere*, to plead, and for no less than life, at this great bar. And whatsoever the world thinks of me, (and they have been taught to think more ill than, I humbly thank Christ for it, I was ever acquainted with;) yet, my lords, this I find *tormentum est*; it is no less than torment to me to appear in this place to such an Accusation. Nay, my Lords, give me leave, I beseech you, to speak plain truth: no Sentence that can justly pass upon me, (and other I will never fear from your lordships) can go so near me as *causam dixisse*, to have pleaded for myself, upon this occasion, and in this place. For, as for the Sentence (I thank God for it), I am at St. Paul's Ward; "If I have committed any thing worthy of death, I refuse not to die," Acts xxv. 11. For, I bless God, I have so spent my time, as that I am neither ashamed to live, nor afraid to die. Nor can the world be more weary of me, than I of it: for seeing the malignity which hath been raised against me by some men, I have carried my life in my hands these divers years past. But yet, my Lords, if none of these things, whereof these men accuse me, merit death by law; though I may not in this case, and from this bar, appeal unto Cæsar, yet to your lordships justice and integrity I both may and do appeal; not doubting but that God of his goodness will preserve my innocency. And as Job, in the midst of his affliction, said to his mistaken friends, so shall I to my Accusers; "God forbid I should justify you; till I die I will not remove my integrity from me; I will hold it fast, and not let it go: my heart shall not reproach me as long as I live." Job xxvii. 5.

" My Lords, I see by the Articles, and have now heard from this Gentleman, that the Charge against me is divided into two main Heads; the Laws of the Land, and the Religion by those Laws established."

" For the Laws first; I think I may safely say, I have been, to my understanding, as strict an observer of them all the days of my life, so far as they concern me, as any man hath; and since I came into place, I have followed them, and been as much guided by them, as any man that sat where I had the honour to sit. And for this I am sorry I have lost the witness of the Lord Keeper Coventry, and of some other persons of honour, since dead. And the Learned Counsel at law, which attended frequently at the Council-Table, can witness (some of them) that in references to that board, and in debates arising at the board, I was usually for that part of the cause where I found law to be: and if the Counsel desired to have their Clients Cause referred to the law, (well I might move in some cases for charity or conscience to have admittance, but) to the Law I left them, if thither they would go. And how such a carriage as this through the whole course of my life, in private and public, can stand with an intention, nay, a practice to overthrow the Law, and to introduce an Arbitrary Government, which my soul hath always hated, I cannot yet see. And it is now many years since I learned of my great Master (in *humanis*) Aristotle, *periculosum esse*; that it is 'a very dangerous thing to trust the Will of the Judge, rather than the written law.'\* And all kingdoms and commonwealths have followed his Judgment ever since; and the School-disputes† have not dissented from it. Nay more, I have ever been of opinion, that human Laws bind the conscience; and have accordingly made conscience of observing them. And this doctrine I have constantly preached, as occasion hath been offered me. And how is it possible I should seek to overthrow those Laws, which I held myself bound in conscience to keep and observe? Especially, since an endeavour to overthrow law, is a far greater crime than to break or disobey any particular law whatsoever; all Particulars being swept away in that General. And, my Lords, that this is my judgment, both of Parliaments and Laws, I beseech your lordships that I may read a short passage in my Book against Fisher the Jesuit, which was printed and published to the world before these Troubles fell on me, and before I could so much as suspect this Charge could come against me; and therefore could not be purposely written to serve any turn. [I had leave, and did read it; but, for brevity-sake, refer the reader to the book itself.]]

" As for Religion, I was born and bred up in and under the Church of England, as it yet

\* Arist. 2 Polit. c. 7, 8.

† Tho. 2, 2æ. q. 60. Ar. 5.

† Confer. with Fisher, § 26, Num. 14, p. 211.

\* Optat. l. 6. cont. Parmenianum.

† Sen. l. 6, de Benef. c. 28.

stands established by Law. I have, by God's blessing, and the favour of my prince, grown up in it to the years which are now upon me, and to the place of preferment which I yet bear: And in this Church, by the grace and goodness of God, I resolve to die. I have ever since I understood aught in Divinity, kept one constant tenor in this my profession, without variation or shifting from one opinion to another, for any worldly ends: and if my conscience would have suffered me to shift tenets in Religion with time and occasion, I could easily have slid through all the difficulties which have pressed upon me in this kind. But, of all diseases, I have ever hated a palsy in religion; well knowing that too often a dead-palsy ends that disease in the fearful forgetfulness of God and his Judgments. Ever since I came in place, I laboured nothing more, than that the external public Worship of God (too much slighted in most parts of this kingdom) might be preserved, and that with as much decency and uniformity as might; being still of opinion, that Unity cannot long continue in the Church, where Uniformity is shut out at the Church-Door. And I evidently saw, that the public neglect of God's Service in the outward face of it, and the nasty lying of many places dedicated to that Service, had almost cast a damp upon the true and inward Worship of God; which while we live in the body needs external helps, and all little enough to keep it in any vigour. And this I did to the uttermost of my knowledge, according both to law and Canon, and with the consent and liking of the people: nor did any command issue out from me against the one, or without the other, that I know of.

"Farther, my Lords, give me leave, I beseech you, to tell you this also: That I have as little acquaintance with Recusants of any sort, as I believe any man of place in England hath: and for my kindred, no one of them was ever a Recusant, but sir William Webb, grandchild to my uncle sir William Webb, sometime lord-mayor of London; and him, with some of his children, I reduced back again to the Church of England, as is well known, and I as able to prove.

"One thing more I humbly desire may be thought on; it is this: I am fallen into a great deal of obloquy in matter of Religion, and that so far as that it is charged in the Articles, That I have endeavoured to advance and bring in Popery. Perhaps, my Lords, I am not ignorant what party of men have raised this scandal upon me, nor for what end, nor perhaps by whom set on: but howsoever, I would fain have a good reason given me (if my conscience led me that way, and that with my conscience I could subscribe to the Church of Rome), what should have kept me here (before my Imprisonment) to endure the libels and the slanders, and the base usage in all kinds, which have been put upon me, and these to end in this question for my life: I say, I would fain know a good reason of this.

"For, first, my Lords, Is it because of any pledges I have in the world to sway me against my conscience? No, sure. For I have nor wife nor children, to cry out upon me to stay with them; and if I had, I hope the call of my conscience should be heard above them.

"Or secondly, Is it because I was loth to leave the honour and the profit of the place I was risen unto? Surely no: for I desire your lordships and all the world else should know, I do much scorn Honour and Profit, both the one and the other, in comparison of my conscience. Besides, it cannot be imagined by any reasonable man, but that if I could have complied with Rome, I should not have wanted either honour or profit. And suppose I could not have so much of either, as here I had; yet sure, would my conscience have served me that way, less of either with my conscience would have prevailed with me, more than greater against my conscience.

"Or thirdly, Is it because I lived here at ease, and was loth to venture the loss of that? Not so neither: for whatsoever the world may be pleased to think of me, I have led a very painful life, and such as I could have been very well content to change, had I well known how. And had my conscience led me that way, I am sure I might have lived at far more ease; and either have avoided the barbarous libellings, and other bitter and grievous scorns, which I have here endured, or at the least been out of the hearing of them. Nay, my Lords, I am as innocent in this business of Religion, as free from all practice, or so much as thought of practice for any alteration to Popery, or any way blemishing the true Protestant Religion established in the Church of England, as I was when my mother first bare me into the world. And let nothing be spoken against me but truth, and I do here challenge whatsoever is between heaven and hell, to say the worst against me in point of my Religion: in which, by God's grace, I have ever hated dissimulation; and had I not hated it, perhaps it might have been better with me for worldly safety, than now it is. But it can no way become a Christian Bishop to halt with God.

"Lastly, If I had any purpose to blast the true Religion established in the Church of England, and to introduce popery, sure I took a very wrong way to it. For, my lords, I have staid as many that were going to Rome, and reduced as many that were already gone, as (I believe) any Bishop or other minister in this kingdom hath done; and some of them men of great abilities, and some of them persons of great place. And is this the way, my Lords, to introduce Popery? I beseech your Lordships consider it well. For surely, if I had blemished the true Protestant Religion, I could not have settled such men in it; and if I had purposed to introduce Popery, I would never have reduced such men from it. And though it please the Author of the 'Popish Royal Favourite' to say, 'That scarce one of the swaying Lord Prelates is able to say, that

'ever he converted one Papist to our Religion; yet how void of charity this Speech of his is, and how full of falshood, shall appear by the number of those persons, whom by God's blessing upon my labours I have settled in the true Protestant Religion established in England: and with your Lordship's leave, I shall name them, that you may see both their number and their condition; though I cannot set them down in that order of time in which I either converted or settled them.\*

"1. And first, Henry Birkhead of Trinity-College in Oxford was seduced by a Jesuit, and brought up to London to be conveyed beyond the seas. His friends complained to me: I had the happiness to find him out, and the blessing from God to settle his conscience. So he returned to Oxford, and there continued.†

"2, 3. Two daughters of sir Rich. Lechford in Surrey were sent to sea, to be carried to a nunnery. I heard of it, and caused them to be brought back, before they were got out of the Thames. I settled their consciences, and both of them sent me great thanks since I was a Prisoner in the Tower.

"4, 5. Two Scholars of St. John's-College in Cambridge, Topping and Ashton, had slipped away from the College, and here at London had got the French Ambassador's pass (I have the pass to shew): I found means to get them to me, and I thank God settled both their minds, sent them back to their College. Afterward's hearing of Topping's wants, I allowed him means till I procured him a Fellowship: and he is at this time a very hopeful young man, as most of his time in that University, a minister, and Chaplain in house at this present to the right honourable the earl of Westmorland.

6, 7, 8. Sir William Webb, my kinsman, and two of his daughters: and the better to secure them, in Religion, I was at the charge (their father being utterly decayed) to marry them to two Religious Protestants; and they both

\* W. Prynn in his Popish Royal Favour, p. 71. Prynn in printing the Archbishop's Speech, omitteth this whole passage concerning himself. H. W.

† See Rushworth, vol. 5, p. 778, who relateth, "That when some of the Lords hearing of the name of Birkenhead, and imagining him to be the Author of the Oxford Aulicus, smiled at it; the Archbishop, taking notice of it, stopped, and assured the Lords that he meant not him, but another person of like name. Yet after all, Prynn, in publishing this Speech, hath the impudence to affirm in the margin of his Book, That this Convert of the Archbishop's was the Author of all the libellous Popish Oxford Aulicus's; although he knew full well, that his name was John Birkenhead: and adds, that at the naming of this Convert, most of the Lords and Auditors smiled; but saith not one word of the Archbishop's correction of their mistake." H. Wharton.

continued very constant. 9. And his eldest son I took from him, placed him with a careful divine, maintained him divers years, and then settled him with a gentleman of good worth.

"10, 11. The next, in my remembrance, was the lord Maio of Ireland, who with another gentleman (whose name I cannot recall) was brought to me to Fulham, by Mr. Jefford, a servant of his majesty's, and well known to divers of your lordships.

"12. The right hon. the lord Duke of Buckingham was almost lost from the Church of England, between the continual cunning labours of Fisher the Jesuit, and the persuasions of the lady his mother. After some Miscarriages, king James, of even-blessed memory, commanded me to that service. I had God's blessing upon me so far as to settle my lord Duke to his death. 13. And I brought the lady his mother to the Church again; but she was not so happy as to continue with us.

"14. The lady marchioness Hamilton was much solicited by some priest, and much troubled in mind about it. My Lord spake with me of it; and though at that present I was overlaid with business, that I could not (as I much desired) wait upon that honourable person myself, yet I told my lord I would send one to his lordship, that should diligently attend that service, and that I would give him the best direction I could. And this I did, and God be thanked she died very quietly and very religiously, and a good Protestant: and my lord marquis told me, he had acknowledged this service of mine to an honourable lord, whom I now see present.

"15. Mr. Chillingworth's learning and abilities are sufficiently known to all your lordships. He was gone and settled at Doway. My letters brought him back; and he lived and died a Defender of the Church of England. And that this is so, your Lordships cannot but know; For Mr. Prynn took away my Letters and all the Papers which concerned him, and they were examined at the Committee.

"16, 17. Mr. Digby was a Priest; and Mr. James Gentleman, a school-master in a Recusant's house. This latter was brought to me by a minister, as far as I remember, in Buckinghamshire. I converted both of them, and they remained settled.

"18. Dr. Hart a Civilian, son to a neighbour of mine at Fulham. He was so far gone, that he had written part of his Motives which wrought, as he said, that change in him. I got sight of them, shewed him wherein he was deceived, had God's blessing to settle his conscience, and then caused an able divine to answer his Motives, and gave him the Copy.

"19. There were, beside these, Mr. Christopher Seburne, a gentleman of an antient family in Herefordshire; and 20. Sir William Spencer, of Yarnon in Oxfordshire. 21. The sons and heirs of Mr. Wintchome and Mr. Willisot, whom I sent with their friend's good-will to Wadham College in Oxford; and I received a Certificate, anno 1638, of their con-

tinuing in conformity to the Church of England; nor did ever any of these relapse again to Rome, but only the old countess of Buckingham and sir William Spencer, that ever I heard of. And if any of your Lordships doubt of the truth of any of these particulars, I am able and ready to bring full Proof of them all. And by this time I hope it appears, that one of the swaying prelates of the time is able to say, he hath converted one Papist to the Protestant Religion. And let any clergyman of England come forth, and give a better account of his zeal to this present Church.

"And now, my lords, with my most humble thanks for your Lordships favour and patience in bearing me, I shall cease to be farther troublesome for the present; not doubting but I shall be able to answer whatever shall be particularly objected against me\*."

After I had ended this Speech, I was commanded to withdraw. As I went from the bar, there was alderman Hoyle of York, and some other which I knew not, very angry, and saying, It was a very strange conversion that I was like to make of them; with other terms of scorn. I went patiently into the little Committee-Chamber, at the entering into the House. Thither Mr. Peters followed me in great haste, and began to give me ill language, and told me that he and other ministers were able to name Thousands that they had converted. I knew him not, as having never seen him, to my remembrance, in my life, though I had heard enough of him. And as I was going to answer him, one of my Counsel, Mr. Hearn, seeing how violently he began, stept between us, and told him of his uncivil carriage towards me in my affliction; and indeed he came as if he would have struck me. By this time, some occasion brought the earl of Essex into that room, and Mr. Hearn complained to him of Mr. Peters's usage of me; who very honourably checked him for it, and sent him forth. Not long after, Mr. Hearn was set upon by alderman Hoyle, and used as coarsely as Peters had used me, and, as far as I remember, only for being of Counsel with such a one as I; though he was assigned to that office by the Lords.

What put them into this choler, I know not; unless they were angry to hear me say so much in my own defence; especially for the Conversion of so many, which I think they little expected. For the next day a great lord met a friend of mine, and grew very angry with him about me; not forbearing to ask what I meant, to name the particulars which I had mentioned in the end of my Speech, saying many godly ministers had done more. And not long after this, the day I now remember not, Mr. Peters

came and preached at Lambeth, and there told them in the pulpit that a great Prelate, their neighbour (or in words to that effect), had bragged in the Parliament-House, that he had converted 32; but that he had wisdom enough not to tell how many thousands he had perverted; with much more abuse. God of his mercy relieve me from reproaches, and lay not these mens causeless malice to their charge!

After a little stay, I received my dismissal for that time, and a command to appear again the next day at nine in the morning: which was my usual hour to attend, though I was seldom called into the house in two hours after.

#### *The Second Day of my Hearing.*

I came as commanded, March 13. 1643. But here before the Charge begins, I shall set down the Articles upon which, according to the Order of March 9, they which were intrusted with the Evidence meant this day to proceed. They were the first and second Original Articles, and the second Additional Article; which follow in these words:

I. "That he hath traitorously endeavoured to subvert the Fundamental Laws and Government of the kingdom; and instead thereof to introduce an Arbitrary and Tyrannical Government against law; And to that end hath wickedly and traitorously advised his majesty, that he might, at his own will and pleasure, levy and take Money of his subjects without their consent in parliament. And this, he affirmed, was warrantable by the law of God.

II. "He hath, for the better accomplishment of that his traitorous Design, advised and procured divers Sermons and other Discourses to be preached, printed and published, in which the Authority of Parliaments, and the Force of the Laws of the kingdom are denied: and an absolute and unlimited power over the persons and estates of his majesty's subjects is maintained and defended, not only in the king, but also in himself and other Bishops, above and against the law. And he hath been a great Protector, Favourer and Promoter of the Publishers of such false and pernicious Opinions.

#### *Second Additional Article.*

II. "That within the space of 10 years last past, the said Archbishop hath treacherously endeavoured to subvert the Fundamental Laws of this realm: and to that end hath in like manner endeavoured to advance the power of the Council-Table, the Canons of the Church, and the king's Prerogative, above the laws and statutes of the realm. And for manifestation thereof, about 6 years last past, being then a Privy-Counsellor to his majesty, and sitting at the Council-Table, he said, 'That as long as he sat there, they should know that an Order of that Board should be of equal force with a law or act of parliament.' And at another time used these words, 'That he hoped ere long, that the Canons of the Church and the king's prerogative should be of as great power

\* Note, That the vulgar copies of this Speech, printed in Rushworth, &c. are very different from this, being taken from the Archbishop's mouth as he spoke; this from the original, as he wrote it. H. W.

'as an act of parliament.' And at another time said, 'That those which would not yield to the king's power, he would crush them to pieces.'

These three Articles they begun with; and the first man appointed to begin was Mr. Maynard: And after some general things against me, as if I were the most violent man for all illegal ways;

I. The first Particular charged against me, was out of my Diary; the words these: 'The king declared his Resolution for a Parliament in case of the Scottish Rebellion. The first movers of it were my lord deputy of Ireland, the lord marquis Hamilton, and myself; and a Resolution voted at the Board; to assist the king in extraordinary ways, if parliament should prove peevish, and refuse, &c.' The time was December 5, 1639. That which was inforced from these Words was, First, that I bestowed the epithet 'Peevish' upon the parliament; and the second, that this voting to assist the king in extraordinary ways, in case the parliament refused, proceeded from my counsel.

1. To this I replied: And first I humbly desired once for all, that all things concerning law may be saved intire unto me, and my Counsel to be heard in every such particular.

2. That the epithet *Peevish* was a very peevish word, 'if written by me. I say, if: For I know into whose hands my Book is fallen; but what hath been done with it, I know not. This is to be seen, some passages in that Book are half burnt out, whether purposely or by chance, God knows; and some other Papers taken by the same hand from me, are now wanting. Is it not possible, therefore, some art may be used in this?' Besides, if I did use the word *Peevish*, it was in my private Pocket-Book, which I well hoped should never be made public; and then no disgrace thereby affixed to the Parliament. And I hope, should a man forget himself in such an expression of some passage in some one Parliament (and this was no more), it is far short of any thing that can be called Treason. And yet farther, most manifest it is in the very words themselves, that I do not bestow the Title upon that Parliament, in that case; but say only, 'If it should prove peevish; which is possible, doubtless, that in some particulars a parliament may; though for the happiness of this kingdom, I would to God it were impossible. But suppose the word peevish had been absolutely spoken by me, is it lawful upon record to say the parliament An. 42 Hen. 3 was *insanum parlamentum*, a mad parliament; and that in the 6 Hen. 4, Indoctum, an unlearned parliament; and that in the 4 Hen. 6, a Parliament of Clubs! And shall it be High-Treason in me, to say a parliament in some one particular was peevish? or but to suppose if it were? Can any man think,

that an unlearned, or a mad parliament, or one of clubs, did not do something peevishly? Might my predecessor, Thomas Arundel\*, tell the commons openly in parliament that their Petitions were sacrilegious? And may not I so much as suppose some one action of a parliament to be peevish, but it shall be Treason? May an ordinary Historian say of that unlearned parliament, That the commons were fit to enter common with their cattle, for any virtue they had more than brute-beasts? And may not I in my private notes write the word *Peevish* of them without Treason?

3. Whereas it is said, That the "voting at the Council-Table to assist the king in extraordinary ways, if, &c. was by my counsel;" there is no such thing in my Diary. There is, that I, with others, advised a Parliament; but there is not one word, that the Voting mentioned at the Council-Table proceeded from any advice of mine. 'So there is no Proof from my Diary, and other Proof beside that was not so much as urged; which was not in favour, but because they had it not: For had they had any other Proof, I see already it should not have been lost for want of urging.' Where I desired their Lordships also to observe in what a difficulty I have lived with some men, who will needs make me a great enemy to Parliaments, and yet are angry with me, that I was one, with others, who moved for that Parliament. So it seems nothing that I do can content some men: for a Parliament, or against it; nothing must be well, if the counsel be mine.

4. For "the voting of assistance in extraordinary ways," I was included in the general Vote of the table; and therefore that cannot be called or accounted my counsel.

5. It is expressed in my Diary, whence all this Proof is taken, that it was in and for the Scottish business; and so is within the Act of Oblivion. 'And these Answers I gave to Mr. Browne, when in the summing up of the Charge against me in the honourable House of Commons, he made this to be my Counsel to the king; and he began with it in his charging of the points against law.'

II. The second Particular this day charged against me was, That after the ending of the late Parliament I did use these words to the king, "That now he might use his own power," or words to that effect. This was attested by sir Henry Vane the elder, then a Counsellor, and present.

1. To this my Answer was, That I spake not these Words, either in terms or in sense, to the uttermost of my knowledge.

2. If I had spoken these Words, either they were ill advised words, but no treason, and then they come not home to the charge; or they are treasonable, and then I ought by law [1 Eliz. c. 6, § antepenult] to have been tried within six months. 'Mr. Browne in his Reply

\* Sir Ed. Coke, Inst. p. 8, c. 1.

\* Speed in H. 4, §. 4.

'to me in the House of Commons, said, That this Statute expired with the Queen, because it concerned none but her, and the heirs of her body. I had here urged sir Edward Coke, (Part 4. Inst. c. 74), as urging this Statute, and commending the moderation of it. But I was therein mistaken, for he speaks of 1 Eliz. cap. 1. And that statute [1 Eliz. cap. 1, & 1 Ed. 6, c. 12.] is in force, and is for trial within six months, for such crimes as are within that statute. So it comes all to one for my Cause, so either of the statutes be in force. And to this Charge in general, I gave the same Answers which are here.'

3. Sir Henry Vane is in this a single Witness; whereas by law [1 Ed. 6, c. 12, § ult. & 1 El. c. 6, § ult.] he that is accused of Treason must be convicted by two Witnesses, or his own Confession without violence; neither of which is in this Case. And strange it is to me, that at such a full Table no person of honour should remember such a Speech but sir Henry Vane.

4. Both this and the former Charge relate to the Scottish Business, and so are within the Act of Oblivion, which I have pleaded. 'Besides, here is nothing expressed in the Words charged which savours of practice, conspiracy, combination, or force, and cannot therefore possibly be adjudged Treason; especially since there is no expression made in the Words witnessed, what Power is meant: for what should hinder the king to use his own power? But legal still; since nothing is so properly a king's own power, as that which is made or declared his own by law. As for the inference, That this was called his own in opposition to Law: First, sir Henry Vane is a Witness to the Words only, and not to any inference; so the Words have but one witness, and the inference none. And perhaps it were as well for themselves, as for persons questioned in great Courts, if they who are employed about the Evidence would be more sparing of their Inferences, many men taying hold of them without Reason or Proof.—Lastly, For the honour of sir Henry Vane, let me not forget this: He is a man of some years; and memory is one of the first powers of man on which age works; and yet his memory so good, so fresh, that he alone can remember Words spoken at a full Council-Table, which no Person of Honour remembers but himself: Had any man else remembered such Words, he could not have stood single in this Testimony. But I would not have him brag of it: for I have read in St. Augustine, that *quidam pessimi, sive, even the worst of men, have great memories, and are tanto peiores, so much the worse for having them.*\* God bless sir Henry!

I have staid the longer upon these two, because they were apprehended to be of more weight than must which follow.

III. The next was a Head containing my

illegal Pressures for Money, under which the next Particular was, That in the Case of Ship-Money I was very angry against one Samuel Sherman, of Dedham in Essex: That I should say Dedham was a Maritime Town; and that when the sum demanded of him was named, I should say a proper sum; whereas the Distress came to eleven Subsidies.

To this I answered, 1. Here was no Proof but Sherman; and in his own cause. 2. He himself says no more, than that he believes I was the Instrument of his Oppression (as he called it); whereas his Censure was laid upon him by the Council-Table, not by me: nor was I in any other fault than that I was present, and gave my Vote with the rest. So here is no Proof at all but his belief. 'Lastly, Here can be no Treason, but against Dedham or Sherman, that I can discover.'

IV. The next to Sherman comes in my great friend, alderman Atkins; and he testifies, That when he was brought to the Council-Table, about the Ship-Money, none was so violent against him as I was; and that this Pressure for Ship-Money was before the Judges had given Sentence for the king. And that at another time I pressed him hard to lend Money, the king being present: at which time he conceived that I favoured alderman Harrison for country-sake; because himself was committed, and not the other.

To this, I must confess, I did use to be serious and zealous too in his majesty's service; but not with any the least intention to violate law. And if this, here instanced, were before the Judgment given for the king; yet it was long after the Judges had put the legality of it under their hands. And I for my part could not conceive the Judges would put that under their hands to be law, which should after be found unlawful. Therefore in this, as I erred with honourable company at the Council-Table, so both they and I had, as we thought, sufficient guides to lead us.

As for the Partiality which he puts upon me in preserving my country-man, alderman Harrison, from prison: 1. He himself durst not affirm it upon his Oath, but says only, that he conceives I favoured him; but his conceit is no Proof. 2. If I had favoured him, and done him that office, it is far short of Treason. But the truth is, alderman Harrison gave a modest and a civil Answer; but this man was rough, even to unmannerliness: and, so far as I remember, was committed for that.—'And whereas he says, I pressed him hard to lend Money, and that none was so violent as I; he is much mistaken: for of all men in that fraternity, I durst never press him hard for any thing, least of all for Money. For I knew not what stuffing might fly out of so full a cushion, as afterwards it is said did, when being a Colonel he was pressed, but not hard, in a little skirmishing in Finbury-Fields.'

V. Then it was urged, That I aggravated a Crime against alderman Chambers, and told

\* Aug. 1. 7, De Civ. Del, c. 3.

him, That if the king had many such Chambers, he would have never a Chamber to rest in: That in the Case of Tunnage and Poundage, he laboured to take bread from the king; and that I pressed upon him in the business of Coat and Conduct-Money.

To this I gave this Answer, That by the affection Mr. Chambers then shewed the king, I had some reason to think, he desired so many Chambers to his use; that if the king had many such subjects, he might want a Chamber for himself; or to that effect. And the violence of his carriage in that honourable assembly gave just occasion to other men to think so. But as for the business of Tunnage and Poundage, and of Coat and Conduct-Money, I conceived both were lawful on the king's part. And I was led into this opinion by the express Judgment of some lords present, and the silence of others in that behalf; none of the great Lawyers at the Table contradicting either. And no witness to this, but alderman Chambers himself.

VI. The sixth particular was, That I urged the Business of Ship-Money upon alderman Adams.

To this my Answer was, That I never pressed the Ship-Money, but as other Lords did at the Council-Table, nor upon other grounds: nor doth alderman Adams say any more, than that he was pressed to this Payment by me and others. And to me it seems strange, and will, I hope, to all men else, that this, and the like, should be a common act of the Lords at the Council-Table, but should be High-Treason in nobody but in me. And howsoever, if it be Treason, it is against three aldermen, Atkins, Chambers, and Adams.

VII. The seventh particular was, That I was so violent about the slighting of the King's Proclamations, as that I said, A Proclamation was of as great force, or equal to a Statute-Law; and that I compared the king to the Stone spoken of in the Gospel; that "who-soever falls upon it, shall be broken; but upon whomsoever it falls, it will grind him to powder." St. Matth. xxi. 34. And for this they brought three Witnesses, Mr. Griffin, Tho. Wood, and Rich. Hayles.

1. This was in the Case of the Soap-business, and two of the Witnesses were Soap-boilers. They and their Company slighted all the Proclamations which the king set out; and all the Lords in the Star-Chamber were much offended, (as I conceived they had great reason to be) at the great and open daring of that whole Company. And whatsoever Sentence passed upon them in that whole business, was given by the Court of Star-Chamber, not by me.—For the Words: 1. These men have good memories, that can punctually, being plain ordinary men, swear words spoken full 12 years since; and yet, as good as their memory is, they swear doubtfully touching the time, as that the Words were spoken in May 1632, or 33.

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2. My Lords, it is impossible these Words should be spoken by me. For I think no man in this honourable presence thinks me so ignorant, as that I should not know the vast difference that is between an Act of Parliament and a Proclamation. Neither can these gentlemen, which press the Evidence, think me so wilfully foolish so to speak, considering they accuse me here for a cunning delinquent. 'So 'God forgive these men the falshood and the 'malice of this Oath!'

3. For the Words spoken of, the Stone in Scripture, it is so long since, I cannot recal whether I said it or no: Nor have I any great reason to observe these angry Witnesses in their own cause. But if by way of allusion I did apply that place to the King and them, it is far enough from Treason. 'And let them, 'and their like take heed lest it prove true 'upon themselves: for seldom do Subjects fall 'upon their King, but in the end they are 'broken; and if it so happen that he falls 'upon them, they are ground to powder.' And Solomon taught me this Answer, where he says, "The anger of a King is death." Prov. xvi. 14. And yet I would not be mistaken: For I do not conceive this is spoken of a King and his natural anger (though it be good wisdom to stir a little passion in Kings as may be), but of his legal anger: According to which, if the Stone roll strictly, few men can so live, but for something or other they may be in danger of grinding.

4. And for these Soap-boilers, they have little cause to be so vehement against me. For if the Sentence passed against them in the Star-Chamber were in any thing illegal, though it were done by that Court, and not by me; yet I alone, so soon as I heard but muttering of it, was the only means of resetting them and their Trade, which none of all the Lords else took care of. 'And the Sum of these Answers 'I gave to Mr. Browne, when he gave up the 'Sum of his Charge against me.'

VIII. The next particular was about Depositions. A Commission of Grace, to compound with some Delinquents in that kind, was issued under the broad-seal, to some Lords, and other persons of honour of the Council, of which I was one. One Mr. Talboys was called thither: and the Charge about this was, That when he pleaded, that by Statute 39 Eliz. he might convert some to pasture; I should say, "Do you plead law here? Either abide the order, or take your Trial at the Star-Chamber:" and that he was fined 50*l*.—In this particular Mr. Talboys is single, and in his own cause: but I was single at no sitting of that Commission: nor did I ever sit, unless the Lord Privy-Seal and Mr. secretary Coke were present, that we might have direction from their knowledge and experience. And for the Words (if spoken), they were not to derogate from the law; but to shew, that we sat not there as any Judges of the law, but to offer his majesty's grace to such as would accept it.

As for the Fine mentioned, we imposed none

upon him or any other, but by the consent of the parties themselves. If any man thought he was not faulty, and would not accept of the favour shewed him, we left him to the Law: but the plain truth is, this gentleman being tenant to the Dean and Chapter of Christ-Church in Oxford, offered them (as they conceived) great wrong in the land he held of them; insomuch as they feared other their tenants might follow his example, and therefore complained of him. And because I laid open his usage of his landlords before the commissioners, he comes here to vent his spleen against me. 'And it is observable, that in all the business of Depopulations, in which so many appeared, no one complained either against me or any other lord, but only this Talboys. Mr. Browne, when he pressed the sum of this charge against me, added, 'That at the Council-Table I was for all illegal projects, as well as for those Inclosures. But, 1. I was neither for this nor any other, either longer or otherwise than I understood them to be lawful. And, 2. I opposed there the business of Salt and the Base Money; and I alone took off that of the Malt and the Brewing: and three gentlemen of Hertfordshire (which county was principally concerned in the Case of the Malt) came over to Lambeth to give me thanks for it.'

IX. Then was charged upon me the Printing of Books which asserted the King's Prerogative above Law, &c. The instance was in Dr. Cowel's Book, word 'King.' That this Book was decreed by Proclamation: That complaint was made to me, that this Book was printing in a close house without license, and by Hodgkinson, who was my printer; that I referred them to sir John Lamb; that they came to me again, and a third time, and I still continued my reference; which sir John Lamb slighting, the Book came forth. The Witnesses to this, were Hunt and Wallye, if I mistook not their names.

1. For this Book of Dr. Cowel's, I never knew of it till it was printed; or so far gone on in printing, that I could not stay it. And the Witnesses say 'it was in a close house, and without license,' so that neither I nor my chaplains could take notice of it.

They say, they informed me of it, but name no time, but only the year 1638. But they confess I was then at Croydon: So being out of town (as were almost all the High Commissioners), I required sir John Lamb, who, being a High Commissioner, had in that business as much power as myself, to look to it carefully, that the Book proceeded not; or if it were already printed, that it came not forth. If sir John slighted his own duty and my command (as themselves say), he is living, and may answer for himself; and I hope your lordships will not put his neglect upon my account.

3. As for Hodgkinson, he was never my Printer; but Badger was the man whom I employed, as is well known to all the Stationers.

Nor was Hodgkinson ever employed by me in that kind or any other: upon just Complaint I turned him out of a place, but never put him into any. And therefore those terms which were put upon me, of 'my Hodgkinson,' and 'my sir John Lamb,' might have been spared. Sir John was indeed Dean of the Arches, and I employed him, as other Archbishops did the Deans which were in their times: otherwise no way mine. And Hodgkinson had his whole dependence on sir Henry Martin, and was a mere stranger to me. 'And this Answer I gave to Mr. Browne when he summed up the Charge. Nor could any danger be in the printing of that Book to mislead any man; because it was generally made known by Proclamation, that it was a Book condemned, and in such particulars; but for other things the book very useful.'

X. The next Charge was, That when Dr. Gill, School-Master of Paul's school in London, was warned out by the Mercers (to the care of which Company that School some way belongs); upon Dr. Gill's Petition to the king, there was a reference to some other lords and myself to hear the business. The Charge is, That at this Hearing I should say, the Mercers might not put out Dr. Gill without his Ordinary's knowledge: and that upon mention made of an act of parliament, I should reply, "I see nothing will go down with you but Acts of Parliament; no regard at all of the Canons of the Church:" and that I should farther add, "That I would rescind all Acts which were against the Canons; and that I hoped shortly to see the Canons and the King's Prerogative of equal force with an Act of Parliament."

To this I answered, That if all this Charge were true, yet this is but the single testimony of Samuel Bland, an officer belonging to the Company of Mercers, and no small stickler against Dr. Gill, whose aged reverend father had done that Company great service in that School for many years together.—The Reference, he grants, was to me and others; for I neither thrust myself into the business, nor was alone in it.—And as there is a Canon of this Church (Can. 77.), That no man may be allowed to teach School, but by the bishop of the Diocess; so *a paritate rationis*, it stands good they may not turn him out, without the said Bishop's knowledge and approbation. And it is expressed in another Canon (Can. 79.), "That if any School-Master offend in any of the premises (there spoken of), he shall be admonished by his Ordinary; and if he do not amend upon that his Admonition, he shall then be suspended from teaching:" which, I think, makes the case plain, that the Mercers might not turn out Dr. Gill, without so much as the knowledge of his bishop.

And for the Words, "That I saw nothing would down with them but an Act of Parliament, and that no regard was had to the Canons;" I humbly conceive there was no offence

in the Words. For though the superiority by far in this kingdom belongs to the Acts of Parliament: yet some regard, doubtless, is or ought to be had to the Canons of the Church. 'And if nothing will down with men but Acts of Parliament, the Government cannot be held up in many particulars.'

For the other Words, God forgive this Witness; for I am well assured I neither did nor could speak them. For is it so much as probable, that I should say, "I would rescind all acts that are against the Canons?" What power have I, or any particular man, to rescind Acts of Parliament? Nor do I think any man that knows me will believe I could be such a fool as to say, That "I hoped shortly to see the Canons and the King's Prerogative equal to Acts of Parliament;" since I have lived to see (and that often) many Canons rejected, as contrary to the Custom of the place: as in Choice of Parish-Clerks, and about the Reparation of some Churches, and the King's Prerogative discussed and weighed by law: Neither of which hath or can be done by any judges, to an act of parliament. 'That there is malice in this man against me, appears plainly; but upon what it is grounded, I cannot tell; unless it be that in this Business of Dr. Gill, and in some other about placing Lecturers (which in some cases this Company of the Mercers took on them to do), I opposing it so far as Law and Canon would give me leave, crossed some way either his opinion in religion, or his purse-profit. I was (I confess) so much moved at the unworthiness of this man's testimony, that I thought to bind this sin upon his soul, not to be forgiven him till he did publicly ask me forgiveness for this notorious public wrong done me. But by God's goodness I mastered myself: and I heartily desire God to give him a sense of this sin against me his poor servant, and forgive him.' And if these Words could possibly escape me, and be within the danger of that Statute; then to that statute which requires my trial within six months, I refer myself.

XI. The eleventh Charge of this day, was the Imprisonment of Mr. George Waker, about a Sermon of his preached to prove (as he said), That it is Sin to obey the greatest Monarchs in things which are against the Command of God; that I had Notes of his Sermons for 4 or 5 years together, of purpose to entrap him; that I told his majesty he was factious; that sir Dudley Carlton writ to keep him close: that in this affliction I protested to do him kindness, and yet did contrary.

My Answer was, That for the scope of his Sermon, 'to obey God rather than man,' no man doubts but it ought to be so, when the commands are opposite. But his Sermon was viewed, and many factious Passages, and of high nature, found in it. And yet I did not tell the king he was factious, but that he was so complained of to me; and this was openly at the Council-Table.

And whereas he spake of Notes of his Sermons for divers years, with a purpose to entrap him; all that he says is, That he was told so, but produces not by whom. And truly I never had any such notes, nor ever used any such art against any man in my life. For his commitment, it was done by the Council-Table; and after, upon some miscarriages of his there by the court of Star-Chamber, not by me; nor can that be imputed to me, which is done there by the major part, and I having no negative. And if sir Dudley Carlton writ to keep him close at his brother's house, contrary to the Lords order, let him answer it; And if he supposes that was done by me, why is not sir Dudley examined to try that truth? As for the Protestation, which, he says, I made to his wife and his brother, that I complained not against him: it was no denial of my complaint made against him at the first, that I heard he was factious; but that after the time, in which I had seen the full testimony of grave ministers in London that he was not factious, I made no complaint after that, but did my best to free him. And the Treason in these two Charges is against the company of the Mercers and Mr. Waker.

XII. The next Charge was, That Dr. Manwaring having been censured by the Lords in Parliament for a Sermon of his against the Liberty and propriety of the Subject, was yet after this preferred by me in contempt of the Parliament-Censure, both to the deanery of Worcester, and the bishoprick of St. David's: And my own Diary witnesses that I was complained of in Parliament for it; and that yet after this I did consecrate him bishop\*.

1. To this I answered, that he was not preferred by me to either of these; and therefore that could not be done in contempt of the Parliament-Censure, which was not done at all. For as for St. David's it is confessed, secretary Windebank signified the king's pleasure, not I. And whereas it was added, that this was by my means; this is only said, but not proved. And for Worcester, there is no Proof but the Docket-Book; Now, my Lords, it is well known in court, that the Docket doth but signify the king's pleasure for such a Bill to be drawn; it never mentions who procured the Preferment. So that the Docket can be no proof at all against me; and other there is none.

2. For the Sermon, 'tis true, I was complained of in Parliament, that I had been the cause of licensing it to the Press; and 'tis as true, that upon that complaint I was narrowly sifted, and an honourable lord now present and the lord bishop of Lincoln were sent to bishop Montague, who licensed the Sermon, to examine and see whether any warrant had come from me, or any message; but when nothing appeared, I was acquitted in open parliament, to somebody's no small grief. 'God forgive them, and their malice against me; for to

\* See vol. 3, p. 335.

'my knowledge my ruin was then thirsted for. And as I answered Mr. Browne's summary charge, when he pressed this against me, could this have been proved, I had been undone long since; the work had not been now to be done.'

That he was after consecrated by me, is true likewise; and I hope, 'tis not expected I should ruin myself, and fall into a *Præmunire*, by refusing the king's royal assent; [25 Hen. 8, c. 20, §. ult.] and this for fear lest it might be thought I procured his preferment. But the truth is, his majesty commanded me to put him in mind of him when preferments fell; and I did so; But withal, I told his majesty of his censure, and that I feared ill construction would be made of it.

To this it was replied, That I might have refused to consecrate, the cause why being sufficient, and justifiable in parliament, and excepted in that law. 'But how sufficient soever that cause may be in parliament, if I had been in a *Præmunire* there-while, and lost my liberty, and all that I had beside, for disobeying the royal assent; I believe I should have had but cold comfort when the next Parliament had been summoned; no exception against the man being known to me, either for life or learning, but only this Censure: nor is there any exception which the Archbishop is by that law allowed to make, if my book be truly printed.'

XIII. Then followed the Charge of Dr. Heylin's Book against Mr. Burton; out of which it was urged, That an unlimited power was pressed very far; and out of p. 40, "That a way was found to make the subject free, and the king a subject." [Heylin cont. Burton. p. 40.] that this man was preferred by me; that Dr. Heylin confessed to a committee, that I commanded him to answer Mr. Burton's Book; and that my chaplain Dr. Braye licensed it.

I answered as follows: I did not prefer Dr. Heylin to the king's service: it was the earl of Danby, who had taken honourable care of him before in the University. His preferments I did not procure: For it appears by what hath been urged against me, that the lord viscount Dorchester procured him his parsonage, and Mr. Secretary Coke his prebend in Westminster.

For his Answer to the Committee, that I commanded him to write against Burton, it was an ingenious and a true Answer, and became him and his calling well; for I did so. And neither I in commanding, nor he in obeying, did other than what we had good precedent for in the Primitive Church of Christ. For when some Monks had troubled the church of Carthage, but not with half that danger which Mr. Burton's Book threatened to this; Aurelius, then bishop, commanded St. Augustine to write against it; and he did so. His words are, "Aurelius scribere precepi, et feci." [Aug. 2. Retract. c. 21.] But tho' I did, as by my place I might, com-

mand him to write an Answer; yet I did neither command nor advise him to insert any thing unsound or unfit. If any such thing be found in it, he must answer for himself, and the Licensor for himself. For as for licensing of Books, I held the same course which all my predecessors had done: and when any chaplain came new into my house, I gave him a strict charge in that particular. And in all my predecessors times, the chaplains suffered for faults committed, and not their lords; though now all is heaped on me. 'As for the particular Words urged out of Dr. Heylin's Book, p. 40, there is neither expression by them, nor intention in them, against either the law, or any lawful proceedings; but they are directed to Mr. Burton and his doctrine only. The words are, "You have found out a way" (not the law, but you Mr. Burton) "to make the subject free, and the king a subject." Whereas it would well have beseeemed Mr. Burton, to have carried his pen even at the least, and left the king his freedom, as well as the subject his.'

XIV. From this they proceeded to another Charge; which was, That I preferred Chaplains to be about the king and the prince, which were disaffected to the public welfare of the kingdom. The instance was in Dr. Dove; and a passage read out of his Book against Mr. Burton: And it was added, that the declaring of such disaffection was the best Inducement or bribe to procure them preferment.

To this I then said, and it is true, I did never knowingly prefer any Chaplain to the king or prince, that was ill-affected to the public. And for Dr. Dove, if he uttered by tongue or by pen any such wild speech concerning any members of the honourable house of commons, as is urged, thereby to shew his disaffection to the public; he is living, and I humbly desire he may answer it. But whereas it was said, That this was the best Inducement or Bribe to get Preferment; this might have been spared, had it so pleased the gentleman which spake it; but I know my condition, and where I am, and will not lose my patience for language.

And whereas 'tis urged, That after this he was named by me to be a Chaplain to the prince his highness; the thing was thus: His majesty had suit made to him, that the prince might have sermons in his own chapel for his family. Hereupon his majesty approving the motion, commanded me to think upon the names of some fit men for that service. I did so: but before any thing was done, I acquainted the right hon. the Lord Chamberlain that then was, with it; my lord knew most of the men, and approved the note, and delivered it to his secretary Mr. Oldsworth to swear them. This was the fact; and at this time, when I put Dr. Dove's name into the List, I did not know of any such passage in his book, nor indeed ever heard of it till now. For I had not read his book, but here and there by snatches.

XV. I am now come (and tis time) to the last particular of this day. And this

Charge was, the giving of Subsidies to the king in the Convocation without consent in parliament: That the penalties for not paying were strict, and without appeal, as appears in the act; where it is farther said, that "we do this according to the duty which by Scripture we are bound unto;" which reflects upon the liberties of parliaments in that behalf. But it was added, they would not meddle now with the late Canons for any thing else, till they came to their due place.

1. My Answer to this was, That this was not any single act, but the act of the whole convocation, and could not be applicable to me only.

—2. That this Grant was no other, nor in any other way, *mutatis mutandis*, than was granted to queen Elizabeth in archbishop Whitgift's time. This Grant was also put in execution, as appeared by the originals which we followed. These originals (among many other records) were commanded away by the hon. House of Commons, and where they now are I know not; but for want of them, my Defence cannot be so full.—3. For the Circumstances, as "that the penalties are without appeal," and the like, it is usual in all such grants. "And that we did it according to our duty and the rules of Scripture," we conceived was a fitting expression for ourselves, and men of our calling, without giving law to others, or any intention to violate the law in the least. For thus, I humbly conceive, lies the mutual relation between the king and his people, by rules of conscience: The subjects are to supply a full and honourable maintenance to the king; and the king (when necessities call upon him) is to ask of his people, in such a way as is *per pacta*, by law and covenant, agreed upon between them, which in this kingdom is by parliament: yet the clergy ever granting their own at all times. And that this was my judgment long before this, appears by a Sermon of mine appointed to be preached at the opening of the Parliament, in the year 1625. My words are these: "If you would have indeed a flourishing both state and church, the king must trust and endear his people, and the people must honour, obey, and support their king, &c." [My Sermon on Psal. lxxv. 2, 3. p. 14.] This, I hope, is far enough from derogating from any law: and if I should privately have spoken any thing to him contrary to this, which I had both preached and printed, how could his majesty have trusted me in any thing?

This brought this tedious day to an end. And I had an Order the same day to appear again on Saturday, March 16, 1643, with a Note also from the Committee which were to charge me, that they meant then to proceed upon part of the second Additional Article, and upon the third Original, and the third and fifth Additional Articles. The second Additional Article is written down before: And here follow the rest now mentioned to be next proceeded upon.

The Third Original is,

III. "He hath by Letters, Messages, Threats,

Promises, and divers other ways, to Judges and other ministers of justice, interrupted and perverted; and at other times, by the means aforesaid, hath endeavoured to interrupt and pervert the course of justice in his majesty's courts at Westminster, and other courts, to the subversion of the laws of this kingdom: whereby sundry of his majesty's subjects have been stopped in their just suits, and deprived of their lawful rights, and subjected to his tyrannical will, to their utter ruin and destruction.

The Third and Fifth Additional follow:

III. "That the said Archbishop, to advance the Canons of the Church and power ecclesiastical above the law of the land, and to pervert and binder the course of justice, hath at divers times within the said time, by his letters and other undue means, and solicitations used to Judges, opposed and stopped the granting of his majesty's Writs of Prohibition, where the same ought to have been granted for stay of proceedings in the Ecclesiastical Court; whereby justice hath been delayed and hindered, and the Judges diverted from doing their duties.

V. "That the said Archbishop, about eight years last past, being then also a Privy-Counsellor to his majesty, for the end and purpose aforesaid, caused sir John Corbet, of Stoke, in the county of Salop, bart. then a justice of peace of the said county, to be committed to the prison of the Fleet, where he continued prisoner for the space of half a year or more; for no other cause but for calling for the Petition of Right, and causing it to be read at the sessions of the peace for that county, upon a just and necessary occasion. And during the time of his said imprisonment, the said Archbishop, without any colour of right, by a Writing under the seal of his Archbishoprick, granted away parcel of the Glebe-Land of the church of Adderly in the said county, whereof the said sir John Corbet was then patron, unto Robert viscount Kilmurrey, without the consent of the said sir John, or the then incumbent of the said church: which said viscount Kilmurrey built a chapel upon the said parcel of Glebe-Land, to the great prejudice of the said sir John Corbet, which hath caused great suits and dissensions between them. And whereas the said sir John Corbet had a Judgment against sir James Stonehouse, knight, in an Action of Waste, in his majesty's court of Common Pleas at Westminster, which was afterwards affirmed in a Writ of Error in the King's Bench, and execution thereupon awarded; yet the said sir John, by means of the said Archbishop, could not have the effect thereof, but was committed to prison by the said Archbishop and others of the council-table, until he had submitted himself unto the order of the said table; whereby he lost the benefit of the said judgment and execution.

The Third Day of my Hearing.

Saturday, March 16, 1643. In the interim, between the 13th and this 16th of March, upon some strict charge to look to the Tower, my

Solicitor was not suffered to come in to me. Whereupon, so soon as I was settled at the bar, before the Evidence began to be opened, I spake to the lords as follows: "My Lords, I stand not here to complain of any thing, or any man; but only am enforced to acquaint your lordships with my sad condition. Your lordships have appointed my Secretary to be my Solicitor, and given him leave to assist me in the turning of my Papers, and to warn in such Witnesses, and to fetch me the copies of such Records as I shall have occasion to use. And I humbly desire your lordships to consider, that myself being imprisoned, and so utterly disenabled to do these things myself; it will be absolutely impossible for me to make any Defence, if my Solicitor be denied to come to me, as now he is."\* This was granted, and the Hearing adjourned till Monday following; and I humbly thanked their lordships for it.

#### *The Fourth Day of my Hearing.*

The fourth Day of my Hearing was Monday, March 18, and was only my Answer to the third day's Charge, and the only time in which I was not put to answer the same day.

I. The first Charge of this day was about St. Paul's. And first out of my Diary (where I confess it one of my projects to repair that ancient fabrick;) and three strict Orders of the Lords of the Council, for the demolishing of the houses built about that church. One was Nov. 21, 1634, the demolishing of the houses commanded by this before Jan. 6, for one, and for the rest by Midsummer. Another was March 26, 1631, a Committee appointed, with power to compound with the tenants, and with order to pull down, if they would not compound. The third was March 2, 1631, which gives power to the sheriffs to pull down, if obedience be not yielded.

To this, I confess I did, when I came first to be bishop of London, project the repair of that ancient and famous Cathedral of St. Paul, ready to sink into its own ruins. And to this I held myself bound in general, as Bishop of the place; and in particular for the body of the Church, the repair of which is by the local statutes laid upon the bishop. And the bishop was well able to do it, while he enjoyed those lands which he had when that burden was laid upon him. 'But what sacrilegious hands despoiled that bishoprick of them, it is to no purpose 'to tell.' And truly, my Lords, since I am in this present condition, I humbly and heartily thank God, that St. Paul's comes into my sufferings; and that God is pleased to think me worthy to suffer either for it, or with it any way: though I confess, I little thought to meet that here, or as a Charge any where else. And so God be pleased, as I hope in Christ he will,

\* Here the Relation is imperfect. It seems he moved, that his Solicitor might come to him, and in the mean time the Hearing put off. W. S. A. C.

to pardon my other sins, I hope I shall be able (human frailties always set as'de) to give an easy account for this. But whereas I said, "the repair of St. Paul's was a strange piece of Treason;" and they presently replied, that they did not charge the Repair upon me, but "the manner of doing it, by demolishing of men's houses:" To that I answered as follows; with this first, That the work hath cost me above 1,200*l.* out of my own purse, besides all my care and pains, and now this heavy Charge to boot: no one man offering to prove, that I have mis-spent or diverted to other use, any one penny given to that work; or that I have done any thing about it, without the knowledge, approbation, and order of his majesty, or the Lords of the Council, or both.

To the Particulars then. For the three Orders taken out of the Council-Books, I shall not need to repeat them. But what is the mystery, that these Orders are reckoned backwards, the last first? Is it to aggravate, as if it rose by steps? That cannot well be; because the first Order is the surest, if I conceive it right. Besides, here was real Composition allotted for them, and that by a Committee named by the Lords, not by me. And I think it was very real; for it cost eight or nine thousand pounds, (as appears upon the Accounts) merely to take down the Houses, which had no right to stand there, before we could come at the Church to repair it.

And if any thing should be amiss in any of these, which is more than I either know or believe, they were the Council's orders, not mine. And shall that be urged as Treason against me, which is not imputed to them so much as a Misdemeanor? Besides, the Lords of the Council are in the ancient constitution of this kingdom one body; and whatsoever the major part of them concludes, is reputed the act of the whole, not any one man's. And this I must often inculcate, because I see such public Acts like to be heaped upon my particular.

1. The first Witness about this business of St. Paul's is *Mich. Burton*, and it is charged that his House was pulled down in king James's time; that he was promised relief, but had none; that hereupon he got a reference from his majesty that now is, and came with it to the Council, and was referred to the Committee: That sir Henry Martin told him, that the Archbishop was his hindrance; that he resorted to me, and that I bid him go to king James for his recompence.

To this my Answer was, That this House, which he says was his, was, as is confessed by himself, taken down in king James's time, when an attempt was made about the repair of this Cathedral, but nothing done. If he desired satisfaction, he was to seek it of them who took down his house, not of me. If his majesty that now is gave him a reference, he was by the Lords of the Council, or by me, if to me it were referred, to be sent to the Sub-Committee, because satisfaction for each house was to be ordered by them. Nor had I any reason to take

it on my care, which was done so long before. He says, that sir Henry Martin told him that I hindered him: but that is no Proof that sir H. Martin told him so; for it is but his report of sir H. Martin's Speech; and I hope sir Henry neither did, nor would do me such apparent wrong. He was the third man to whom I brake my intentions touching the Repair and the difficulties which I foresaw I was to meet with; and he gave me all encouragement. And it may be, when nothing would satisfy the eager old man, I might bid him go to king James for recompence: but it is more than I remember, if I did so. And this man is single, and in his own case; and where lies the Treason that is in it? Besides, least consideration was due to this house: for not many years before the demolishing of it, it was built at the west end of St. Paul's for a Lottery, (it was said to be the house of one Wheatly) and after the Lottery ended, finished up into a dwelling-house, to the great annoyance of that Church: the Bishop and Dean and Chapter being asleep while it was done.

2. The next Charge about St. Paul's was witnessed by *Mary Berry*, That her husband was fain to set up his trade elsewhere, and that every man reported the Bishop was the cause of it.

Her husband was forced by this remove to set up his trade elsewhere; so she says: and perhaps in a better place, and with satisfaction sufficient to make him a better stock: Where is the wrong? Beside, she is single, and in her own cause, and no Proof, but that every man reported the Bishop was the means to remove him. And it is observable, that in king James's time, when the Commission issued out for the demolishing of these very houses, the work was highly applauded; and yet no care taken for satisfaction of any private man's interest: 'That now great care hath been taken, and great sums of Money expended about it, yet I must be a Traitor, and no less for doing it. This makes me think some party of men were heartily angry at the Repair itself, though for very shame it be turned off upon the demolishing of the houses.'

3. The next that came in was *Tho. Wheeler*: He says, that his house was pulled down by the Committee, by my direction, about 11 years ago; and that word was brought him of it.

His house was pulled down; but himself confesses it was by the committee. It was, he says, above 11 years ago, and the time limited in that article is six years.\* He says, that word was brought him that I was the cause, or gave the direction. Word was brought him, but he names not by whom, nor from whom; so all this proof is a single hearsay of he knows not whom: whereas I had the broad seal of England for all that was done. It was replied here, That for demolishing of these houses the king's Commission was no full and legal warrant: I should have procured authority from

parliament. I replied to this interruption, That houses more remote from the Church of St. Paul's were pulled down by the king's Commission only in king Edward the 3d's time; and humbly desired a *salvo* might be entered for me till I might bring the Record:\* which was granted.

4. The last Instance for this Charge of St. Paul's, was the House of *W. Wakern*; who witnessed, That he had 100*l.* recompence for his House, but then was after fined in the High Commission Court 100*l.* for profanation, of which he paid 30*l.*

To this I gave this Answer, That his Charge is true; and that after he had received 100*l.* composition, the cry of the Profanation brought him into the High Commission. It was thus: The skulls of dead men (perhaps better than himself) were tumbled out of their graves into his draught, and part of the foundation of the Church (as appeared in the taking down of his house) was broken, or pared away, to make room for the uncleanness to pass into the vault: And surely were I to sit again in the High Commission, I should give my vote to censure this Profanation. But himself confesses, he paid but 30*l.* of it, which was too little for such an offence. And besides, my lords, this was the act of the High-Commission, and cannot be charged singly upon me.

And I cannot forbear to add thus much more, That the Bishop and Dean and Chapter, whoever they were, did ill to give way to these Buildings, and to increase their rents by a sacrilegious revenue; no law, that I know, giving way to build upon consecrated ground, as that Church-yard is. But howsoever, the present tenants being not *in dolo*, I ever thought fit they should have recompence for their estates, and they had it.

II. The next Charge was about the shops of the Goldsmiths in Cheapside and Lombard-street. An Order was made at the Council-Table, Nov. 12, 1634, That within six months the Goldsmiths should provide themselves shops there, and no where else, till all those shops were furnished; and this under a penalty, and to give bond.

These two were the ancient places for Goldsmiths only, time out of mind: and it was thought fit by the Lords, for the beauty of the place, and the honour of the City, to have these places furnished as they were wont, and not to have other trades mixed among them. Beside, it concerned all mens safety; for if any Plate were stolen, the inquiry after it might be made with more ease and speed: whereas if the Goldsmiths might dwell here and there, and keep their shops in every by-place of the city, stolen plate might easily be made off, and never heard of. But howsoever, if in this Order there were any thing amiss, it

\* See this Record twice referred to afterwards. In the latter place the useful words of it are recited.

\* Ten. *Vide* the second Additional Article.

was the order of the Council-Table, not mine; and far enough off from Treason, as I conceive.

1. Upon this Charge there were two instances. The first is Mr. Bartley; who said his house was taken from him, by order to the Lord Mayor, 1637. That my hand was to the order; that he was imprisoned six months, and recovered 600*l.* damages of sir Ed. Bromfield; That after this he was committed to Flamsted, a messenger belonging to the High-Commission about Dr. Bastwick's and Mr. Burton's Books; that after this he was sent for to the council, and there heard my voice only; That when he desired some help, sir Thomas Ailsbury's man told him, He were as good take a bear by the tooth; That all this was for his entertaining a man that came out of Scotland. And lastly, That Dr. Haywood, my chaplain, had licensed a Popish Book.

To which I gave this Answer: That if the Lord Mayor put him from his house, by Order from the lords, (being a Stationer among the Goldsmiths) then it was not done by me; and though my hand were to the Order, yet not mine alone; and I hope my hand there subscribed no more Treason than other lords hands did. And if he did recover 600*l.* against sir Ed. Bromfield, who (I think) was the Lord Mayor spoken of, surely he was a gainer by the business. And whereas he says, he was after seized again, and committed to Flamsted about the Books named; if he were (as was informed) a great vender of those and such like Books, less could not be done to him than to call him to answer. He says farther, That he was sent for to the Council-Table, and there he heard my voice only against him. It may be so, and without all fault of mine: for that heavy office was usually put upon me and the Lord Keeper to deliver the sense of the Board to such as were called thither, and examined there; and by this means, if any sour or displeasing Sentence passed, (how just soever, it mattered not) it was taken as our own, and the envy of it fell on us. And that this was so, many lords here present know well. He adds what sir Thomas Ailsbury's man said, when he would have petitioned again: but since Mr. Bartley is single here, and in his own cause, why doth he rest upon a hearsay of sir Thomas Ailsbury's man? Why was not this man examined to make out the Proof? And if this man did so far abuse me, as to speak such words of me, shall I be abused first, and then have that abuse made a Charge? That he was troubled thus for a Scotchman's coming to him, is nothing so, nor is any Proof offered; though then the Troubles were begun in Scotland; and therefore if this had any relation to that business, I pleaded again the act of oblivion. For that of Dr. Haywood, I shall give my Answer in a more proper place; for it is objected again.

2. The second instance was in Mr. Manning's Case. He speaks also of the Order of the Council, Nov. 12, 1634. That the Goldsmiths in their Books make an Order upon it, June 15, 1635. That they which obey not

should be suspended (I think it is meant from use of their trade), that when some intreated them to obedience, I should say, 'This Board is not so weak, but that it can command;' or to that effect.

For the Council's Order, it was theirs, not mine. For the Order which the Company of Goldsmiths made upon it, it was their own act, I had nothing to do with it. For the Words, if I did speak them (which is more than I remember), he is single that swears them, and in his own cause. But, my lords, I must needs say, whether I spake it then or not, most true it is, that the Council-Table is very weak indeed, if it cannot command in things of Decency, and for Safety of the Subject, and where there is no law to the contrary. And this was then my Answer.

III. The third Charge of this day was, That I forced men to lend Money to the Church of St. Paul's: and Mrs. Moore was called upon. But this was deserted.

IV. The next Charge was concerning a long and tedious Suit between Rich and Poole, about the Parsonage of North-Cerney, in Gloucestershire: That Rich was turned out, after three years possession, by a Reference procured by Poole to my Lord Keeper Coventry and myself; and that I did in a manner act the whole business at the Reference: That letters were sent from the Council to sir William Masters, one of the patrons, to see Poole instituted, and to imprison Rich if he refused obedience: that after by the Lord Marshal's procurement, there was another reference obtained to thirteen lords, who awarded for Rich.

I was never more weary of any business in my life than I was of this Reference. And I was so far from acting the whole business, as that I did nothing but as the Lord Keeper directed, the cause was so entangled with *Quare Impedit*, and many other businesses of Law. Our Judgments upon full hearing went with Poole, and we certified accordingly. And upon this (it may be) the letters mentioned were sent down for Poole. And if the Lord Keeper that now is, then his majesty's Solicitor, could not or durst not meddle, but gave back his fee (as was farther urged), his lordship is living to tell the cause himself; for here was none set down, tho' it were urged as if he did it because I was a Referree. And in the mean time, this is but a bare report concerning him. If the thirteen lords, to whom it was after referred, were of another opinion, that was nothing to us, who, without any touch of Corruption, did as our knowledge and conscience guided us. And, my lords, it seems this Title was very doubtful; for after all this, it came into this parliament, and was referred to a committee, where Mr. Rich was very willing to compound the business. 'And well he might; for I was since certified by a gentleman, a lawyer, that understood well, and was at the hearing of that cause, that it was one of the foulest causes, 'on Rich's side, that ever he heard. And out

‘ of this I took the sum of my Answer, which I gave to Mr. Browne, when he summed up my Charge.’

The Witnesses to this Charge were Mr. Rich’s brother, and my good friend Mr. Talboys. But this latter witnesses nothing but that he heard me say that Poole’s behaviour was unfit; so there I checked the one party: And that upon some words given me by Rich, I should say, “Do you throw dirt in my face?” And why might I not ask this question, if his words deserved it? So upon the matter, here is Rich single in his brother’s case, and nothing throughout that looks like Treason.

Here I had a snap given me, That I slighted the Evidence: Whereas they, as ’twas said, did not urge these particulars as Treason, but as things tending to the violation of law, and should be found to make Treason in the result. ‘The truth is, I did then think within myself, that such evidence might very well be slighted in an Accusation of Treason. But I thought better to forbear; and so in my continued patience expected the next Charge.’

V. Which was Mr. Foxlie’s Imprisonment about Popish Books. That he was tendered the Oath *ex Officio*, then brought before the Council, and imprisoned again by a warrant under my hand, and others, and my hand first to the warrant, his wife not suffered to come to him till he was sick; that the chief cause of all this was the Imprisonments, because he desired to name the men for the Feoffment.

My Lords, this man confesses he was called in question about Popish Books; but expressing no more, I cannot tell what to make of it; nor can I tell how to accuse him of Popish Books. ‘For I cannot tell which is least, his understanding of them, or his love to them.’ And for tendering him the Oath *ex Officio*, that was the usual proceeding in that Court. When he was brought before the lords of the Council, he says the Warrant for his Imprisonment was under my hand and others: This was according to course; so the commitment of him was by the lords, not by me. But my hand was first; so was it in all things else, to which I was to set it. And the restraint of his wife from coming to him, was by the same Order of the Lords: And upon her Petition, when her husband was sick, both of them confess she had admittance. But whereas he says the chief cause of his commitment was the Feoffment, he is much mistaken: Himself says before, it was about Popish Books. This I am sure of, the Feoffment was not so much as mentioned against him; though he freely confesses that he got twelve men to undertake that Feoffment: which was a great deal more power than he could take to himself by law. And his wife speaks not one word to the cause of his Imprisonment. So he is single, and in his own cause, and no treason, unless it be against Mr. Foxlie.

VI. The next Charge of this day was Mr. Vassal’s Imprisonment: And to save repetition,

I shall weave all the circumstances of Aggravation and my Answer together.

First, He is single in all, both Substance and Circumstance. Secondly, He says, “That he conceives I was the cause of his Imprisonment.” But his conceit is no Proof. He says again, That I said at the Council-Table, whither he was called, “Why sit we here, if we be not able to judge?” It may be, my lords, I said so: I remember not now: But if I did say so, it was of such things only as were fit and proper for that honourable board to judge of. Then he charged, that I should there say, “That he did eat the bread out of the king’s children’s mouths; and that if he were in another country, he would be hanged for it.” ‘I doubt this gentleman has borrowed some of sir Henry Vane’s memory.’ But I remember no such thing. Yet if I did say it, it was no Treason: For if I did say he might be hanged for the like in some other countries, it was because the laws and customs of other countries, and this of ours, differ in many things. So that by this Speech he was to thank the law of the land for his preservation, notwithstanding his opposition against majesty; which, where the laws were not so favourable to the subject, would not be endured.

He says, “He was fain to deposit 300*l.* into the hand of sir Abra. Dawes, and that it was taken out the next day.” But he says withal, it was done by a Decree at the Council-Board; and I hope I shall not be held author of all Decrees which passed there. He says that I called him “Sirrah:” A high crime, if I did so! high treason at least! But sure this gentleman’s spleen swelled up “Sir” into “Sirrah:” For that is no language of mine to meaner men than Mr. Vassal is. The main of this Charge is Words; ‘and those, if uttered, hasty, not treasonable. And as M. Lepidus spake in the case of C. Lutorius Priscus, Vana a scelestis, dicta a maleficiis differunt, [Tacit. L. 3. Annal.] Vain things differ from wicked, and words from malicious deeds. And let any man else be sifted as I have been for all the time I have been a Bishop, which is now upon the point of 23 years, and I doubt not but as high words as these will be heard from him upon less occasion, and of greater personages than Mr. Vassal is. Besides, Mr. Vassal, at the end of his testimony, desired the Lords he might have Reparation; which altogether in law infirms that which he testified.’

VII. After this followed a Charge about a Grant passed from his majesty to one Mr. Smith. The difference was between Mrs. Burrill and him. As far as I can recall, it was thus: The king had made a Grant to Mr. Burrill in his life-time, of a Wharf, or something else belonging to the Thames. Mr. Smith conceals this, and gets a Grant from his majesty over the head of the widow and her children: and as himself confesses, his majesty being informed that Mrs. Burrill was sister to the reverend pre-

late bishop Andrews, being then dead, should say, 'That he would not have granted it to Mr. Smith, had he known so much.' This was an honourable memory of his faithful servant, her worthy brother. But whatsoever was done in this business, was by order of the Council-Board, and not by me; as was also the 250*l.* which (he says) was paid in to sir William Beacher (by way of deposit, as I conceive). In which, if he had any hard measure, the law was open for his right. And in the whole business he is single, and in his own cause.

VIII. The next Charge was sir Jo. Corbet's; which, because it is expressed at large in the Article before recited, I shall not here repeat, but apply the Answer to it, which I then gave.

Sir John says he "was sent for about reading the Petition of Right at a sessions in the country; and that the earl of Bridgewater should say he was disaffected to the king." This concerns not me in any thing. He says, "That for this he was committed, lay long in the Fleet, and was denied bail." But he says it was denied by the whole Board. So, by his own Confession, this was the act of the council, not mine. And this Answer I gave to Mr. Browne, when he put this part of the charge into his sum.

In his Cause with sir John Stonehouse about a Waste, I cannot recal the particulars: but whatever was done therein, himself confesses was by Order of the Council-Table, and his majesty present, April 18, 1638.

For the Isle built by the lord viscount Kilmurrey, the Grant which I made, was no more than is ordinary in all such cases; and it is expressed in the body of the Grant, "*Quantum in nobis est, et de jure possumus.*" So there is nothing at all done, to the prejudice of sir John's inheritance: for if we cannot grant it by law, then the Grant is voided by its own words. And that the Grant was such, and no other, I shewed the deeds ready attested out of the Office. Besides, had I wronged him, there was an ordinary remedy open by Appeal to the Delegates. And this was well known to him; for he did so appeal from a like Grant against him by the now lord bishop of Duresme, then of Litchfield, and sir John's Diocesan. And whereas it is alledged, "That I made this Grant without the consent of him the patron, or the then incumbent;" sir John acknowledges, like a gentleman, that I sent unto him for his consent, if it might have been had. And this I foresaw also, that if I had denied the lord viscount that which was not unusual, then the complaint would have fallen more heavy on the other side that I made persons of quality in a manner Recusants, by denying them that conveniency which was in my power to grant. So I must be faulty, whatever I do.

IX. Then the business of the Tythes of London was raised up in Judgment against me. And it was read out of my Diary, that I projected to give the ministers assistance therein.

I had been much to blame, having been bishop of London, should I have had other thoughts: for their Case is very hard; all their Offerings being shrunk away into nothing but a poor Easter-Book. The ministers of London had often petitioned about some relief long before my time; and I did then, and do still think it most just they should have it. 'For they are now under the task-masters of Egypt; (Exod. v. 7.) the tale of brick must be made; they must preach twice a Sunday, get straw where they can.' And yet I never thought of any thing contrary to law, had all been done which I desired: for that was no more than that the citizens would voluntarily yield to some reasonable addition, where right and need appeared. And this, I am sure, nor did nor could cross with the act of parliament concerning the Tythes of London. And Mr. Moss, who is their only Witness in this particular, says no more against me, but that "I pressed this business much and often." Which is most true I did; and held it my duty so to do; but still in the way before mentioned.

X. After this came the great Charge (as at present it is accounted) concerning the Censure of Mr. Prynne, and Burton, and Bastwick, in the Star-Chamber, and their Banishment (as it is called, upon it.\* The Witnesses produced in some circumstances of that Cause, were Mr. Cockshott, Tho. Edwards, William Wickens, Mr. Burton, Mrs. Bastwick, and Mr. Prynne himself. The Censure is known and urged to be against law: but so far as any particular is put upon me, my Answer is present to it.

1. And, first, for Mr. Cockshott, he says, "Mr. Attorney Banks sent him (being then his servant) to give me an Account of that business." Hence it is inferred, that I took care of it. This might have had some shew of proof, if I had sent to Mr. Attorney to give me an Account of it. But there is no word of any such Proof. And yet, considering what relation their cause had to the Church, if I had sent and desired some Account of the Proceedings, I humbly conceive (my place in the Church considered) it could have been no great crime.

2. Then were read certain Warrants, one Feb. 1, 1632, for commitment, another of Feb. 2, 1636, to bar access to them. These were acts of the lords sitting in Star-Chamber, not mine. Then was read a third Order, after Sentence given, of May 13, 1634, for the seizing of his Books. But this, as the former, was an act of the Court, not mine: and it is expressed in the Order (as the Charge itself lays it down) for the disposal of the Books according to law. Then the Warrant of their commitment to the islands, Aug. 27, 1637. This commitment was no device of mine; nor did I ever hear of it till it was spoken by others in the Star-Chamber. Nor do any one of these Warrants prove any thing that can be called my act. And I humbly conceive that I ought not by law, nor can by usage of parliamentary

\* See vol. 3, p. 711.

proceedings, be charged single for those things which were done in public courts. The last Order was, Nov. 12, 1637, about the aldermen of Coventry, and the Quo Warranto resolved upon against the Charter of that city, "only for supposed favours shewed to Mr. Prynne in his passage that way." First, it is confessed in the Charge, that this was an act of the Lords. Secondly, That it was made at a full board. Thirdly, It is not urged that any one man disliked it. Fourthly, The complaint which caused it, was, that both aldermen and their wives, and other citizens, were not content to shew Mr. Prynne kindness; but they both did and spake that which was disgraceful to the Star-Chamber Sentence. But howsoever, there is no particular in that order that is or can be charged upon me.

3. This for the Warrants. The next Witness concerning this charge was *Tho. Edwards*.

He says, "That three hampers of Mr. Prynne's Books were taken out of his house," (whither it seems they were conveyed for safety) "and no warrant shewed to take them." The weaker man he, to let his friend's Books go so. But this Witness hath not one word of me.

4. The next witness was *William Wickens*. He says, "He knew of no Warrant neither; but that License was given by the Sheriffs about six years since." Here is never a word concerning me: nor am I to answer for the Sheriffs act. And whereas it is an aggravation in the Charge, "That all Mr. Prynne's Books were sold;" *Tho. Edwards* says there were but three hampers of them; and this Witness says he bought them for two-and-thirty pounds. And these neither by number nor price could be half of Mr. Prynne's Books, if I have heard truth of his Library.

5. After this man's testimony, comes *Mr. Prynne* himself in his own cause. He made a long relation of the business, and full of bitterness against me. This I doubt not was purposely done, to represent me as odious as he could to the Lords and the hearers. But I shall assume nothing to myself, that was done by Order of the court of Star-Chamber: whatsoever was done there by common consent, was their act, not mine; and if any Treason be in it, they are as guilty as I; for treason admits no accessories. Nor will I meddle with the language: God forgive him that, and whatever else he hath done against me. Only I shall answer to all such particulars of his as seem to touch upon myself.

(1.) First then he says "He brought a Prohibition, An. 1629, and that was the ground of my hatred against him." For Prohibitions, I shall answer when they are charged: but as I remember not this, so I bare him no hatred; and bearing him none, it could not be for that cause: nor doth he so much as offer to prove it was.

(2.) Next he says, "I gave direction to Mr. Attorney Noy, and that Dr. Heylin drew some Informations for him." Dr. Heylin was well acquainted with Mr. Attorney; but how

long, or upon what grounds, I know not: Nor did I give Mr. Attorney any direction. What Dr. Heylin did, if he did any thing, is nothing to me, unless I set him on; which is not proved, nor sworn.

(3.) He farther says, That "Mr. Attorney read his Book twice over, and said, that he found nothing amiss in it." I know not what Mr. Attorney said to him, nor what he may say of Mr. Attorney now he is dead: this I am sure of, and it is well known to some of your lordships, he said far otherwise in open court.

(4.) He says, That "his Book was licensed to the press, and after that seized; and that the Messenger told him it was done by me." This was done by warrant of the High Commission, not by me: Nor doth he offer any Proof against me, but that the Messenger told him so; which is a bare hearsay, and no proof.

(5.) Then he says, That "there was another Order given about his business, and that I did it." But he brings no Proof for this, but that Mr. Ingram, the then Keeper of the Fleet, told him so. But this is as bare a hearsay as the former, and Mr. Ingram not produced to make out the Proof.

(6.) Then he says, "He writ me a Letter, and that I sent it to Mr. Attorney, to have him yet farther proceeded against." It is true, my Lords, he did write unto me; but whether it were a Letter, or a Libel, I leave other men to judge. This Letter I did send to Mr. Attorney; but only to let him see how I was used, not to have any farther proceedings against him. But Mr. Attorney was so moved at the sight of it, that when he saw me next, he told me he would call him *Ore tenus* for it. Therefore, it seems, somewhat was very much amiss in it, call the Writing what you will.

(7.) He says, "Mr. Attorney thought he had not kept the Letter; but he was deceived, for he had it." But how was Mr. Attorney deceived? I'll tell your lordships what himself told me. When Mr. Attorney saw that I would not agree to any farther Prosecution, he sent for Mr. Prynne, shewed him the Letter, and thought, after he had read it, to give him some good counsel, to desist from that libelling humour of his. But Mr. Prynne, after he had got the Letter into his hands, went to the window, as if he meant to read it; and while Mr. Attorney was otherwise busied, he tare it into small pieces, and threw it out at the window; and then said unto him, "This shall never rise in judgment against me." Now he confesses he hath the Letter still, and that Mr. Attorney was deceived: Belike he tare some other Paper for it, and put the Letter in his pocket. 'But that you may see the honesty of this man, and what conscience he makes of that which he speaks upon his Oath; here he says he had the Letter still, and that Mr. Attorney was deceived: And yet after this, when he sets out his Breviate of my Life, he confesses, in an unsavoury marginal Note, (p. 19.) "That he tare it, Mr. Attorney having need of such a paper." And for this Breviate of his, if God

'lend me life and strength to end this first, I shall discover to the world the base and 'malicious slanders with which it is fraught.'

(8.) He went on, and said, "There was an Order made against him when Term was done, so that he could have no remedy." This is directly against the Court and their Order, not against me.

(9.) Then he cites out of the Epistle before my Speech in the Star-Chamber, "That I censured him for having his hand in the Pamphlets of those times, and yet was doubtful of it." The words are, "For I doubt his pen is in all the Pamphlets." But, first, it is acknowledged I gave no Vote at all in his Censure; and if I did not judicially censure him, then sure I was not doubtful, and yet censured. Secondly, He was censured upon his own Pamphlet; and his hand was certainly in his own, what doubt soever I might make of its being in theirs. And, thirdly, if the Words be extended to their Pamphlets also, that is nothing to prove I doubted of the justness of the Sentence. For the words are not, "I doubt his pen is in all those Pamphlets of Mr. Burton and Dr. Bastwick;" but in all the Pamphlets, whether their libels, or any others: so I might be doubtful of the one, and yet certain enough of the other.

(10.) And whereas he adds, "That he was jointly charged with Dr. Bastwick and Mr. Burton, yet could not be suffered to speak together for a joint Answer; and that his Cross-Bill was refused:" All this was done by the Court of Star-Chamber, not by me. And your lordships know well the Lord Keeper managed the affairs of that Court, not I.

(11.) Then he says, "That at last Mr. Holt came to him, but was threatened that very afternoon for it." But he doth not tell your lordships by whom; and for my part, more than civil giving him the time of the day, I never spake with him in all my life.

(12.) He tells your lordships next, "how he passed through Coventry," (to which I have spoken already) "and how through Chester, and how some Chester men were used concerning him and his entertainment." But, my Lords, whatsoever was done in this, was by the High-Commission at York; and if any thing be therein amiss, they must answer that did it.

(13.) Lastly, he spake of sending sir William Balfore to me, and some other like particulars. Of all which there is no Proof, but a bare relation what Mr. Hungerford, Mr. Ingram, and sir William Balfore said; which is all hearsay, and makes no evidence, unless they were present to witness what was said. 'And here give me leave to observe, that Mr. Prynne hath in this Charge woven together all that he could say concerning both causes, for which he was censured: For in the third Particular he speaks of his Book, for which he was first censured; and in the ninth and tenth of his Cross-Bill, and the like, which were in his second cause.'

6. The sixth Witness was Mr. Burton, a party too. For that which he said agree-

able to Mr. Prynne; it received the same Answer. And he added nothing new, but "that his wife was kept from him by Warrant from the Lords." And if it was by the Lords Order, then was it not by me. And when it was replied, That till he was sentenced to Guernsey, his wife had access to him: Mr. Burton answered, "Yea; but, my Lords, she was not suffered to be with me at nights." At which the Lords fell a laughing, and there ended his Charge.

7. The last Witness was M.<sup>s</sup>. Bastwick; and she also said nothing different from Mr. Prynne, but that she was kept from her husband, and that she petitioned the Lords about it; but of me in particular, not one word. 'And though Mr. Brown, in his last Reply upon me, said, The time of these mens Censure, was the noted time of the oppression of the Subjects Liberty; yet I shall crave leave to say of these men, as St. Augustine once said of two great Donatists in his time, who (it seems) had received some Sentence, and afterwards a return, not altogether unlike these men: (they were Felicianus and Pretextatus) of those thus St. Augustine; "if these men were innocent, why were they so condemned? And if they were guilty why were they with such honour returned and received?" [Si innocentes erant, quare sic damnati sunt? si scelerati, quare sic recepti? Aug. Epist. 172.] This applies itself. And here I am willing to put the reader in mind too, That Mr. Brown drawing up an exact sum of my Charge, and pressing it hard against me, to my remembrance (and I think my Notes could not have slipped it) passed by this Charge concerning Mr. Prynne; and I cannot but think he had some reason for it.'

XI. This tedious Charge being over, the world ran round, and I was brought back again to another Charge about demolishing the Houses at St. Paul's; and here three Witnesses more came against me.

1. The first was Mr. Bently: He said, "There were above 60 houses pulled down." I answered, I know not the number: but if there be so many, the recompence given was sufficient for more. He said farther, That "there were 20 yards between the Church and some of the houses." There were very few, if any such (let him look to his Oath;) but then some were close upon the wall of the Church. And suppose all had been 20 yards distant; that was not room enough to bring in, and lodge materials for the repair, and to turn the carriages. And here again I made mention of my *Salvo*, before desired, for the Record of Ed. 3, touching the like Buildings, and their Demolition.

2. The second Witness was Mr. Goore. For the 60 Houses, as was before testified, I gave the same Answer; as also, that the act of the Council-Table cannot be said to be my act. For St. Gregory's Church they were not left without a place for Divine Service, (as he would fain have it thought;) For they were assigned to a part of Christ Church, till another church

might be built for them. And for the pulling down of St. Gregory's it is well known to divers of that parish, that I was not so much as one of the Referrees, to whose view and consideration it was referred. But the truth is, this man rented the Parsonage-House, and had a good penny-worth of it to gain by his under-tenant. The going down of that house troubles him, and not the Church.

3. The third Witness, *Walter Biggs*, says nothing different from the two former; "but that I said I was opposed for the pulling down of the Houses." Whence it was inferred, that it was my Act: because I was opposed. But my Lords, I hope, I might say, "I was opposed" without any offence, or without taking the Order of the Council-Table to myself; For it is well known the work of that Repair, under God, was mine; and I took no indirect, no oppressing way to it; nor can I now be ashamed of that, which, in future times, in despite of the present malice, will be my honour. So that the care of the work lying upon me, I might well say 'I was opposed,' though the opposition went higher, against the Orders of the lords.

XII. The last Charge of this Day, was about the putting down of two Brewers in Westminster, because the excessive and noisome smoke from thence much annoyed the King's House, Gardens and Park at St. James's. These two were Mr. Bond and Mr. Arnold.

1. For Mr. *Bond*, he begins with somewhat that I should say at the Council-Table; as namely, that he must seal a Bond of 2,000*l.* to brew no more with sea-coal. Now this argues, if I did so speak, that it was in delivering to him the sense of the Board; which office (as I have before expressed, and is well known) was usually put upon me, if I were present. And your lordships may here again see what envy hath followed me upon that which I could not decline. He says farther, That upon this Mr. Attorney Banks "proceeded against him in the Exchequer;" That there upon some occasion the Lord Chief Baron should say, "Ye are wise Witnesses for the king;" That "his counsel were forbid to plead, and so a Verdict passed for the king;" All this is nothing to me: I was neither Chief Baron nor Witness, nor one of the Jury that gave the Verdict. He says, "He was informed, that there was an Order of Council made, that no man should put up a Petition for him;" But himself doth not so much as mention, that this Order was procured by me; And it is but a report that no Petition might be delivered for him; and none of them that told him so, produced for proof. So he scandalizes the Lords by hearsay.

Next he says, That the "King graciously sent him with a reference to the Council for satisfaction." First, I must believe if he were so sent, the wrong being only the king's, and he willing he should have satisfaction however for his loss; 'That the lords would never re-

'fuse, in such a case, whatsoever is here said to the contrary. Secondly, It may be observed 'how gracious the king was to the subject; 'that though the annoyance was great to that 'house of his recreation and retiring near the 'City, yet he would not have Mr. Bond suffer 'without satisfaction: notwithstanding which 'goodness of the king, he comes into this great 'Court; and so he may have a blow at me, 'blasts, as much as in him lies, all the king's 'proceedings, under the name of oppression, 'and that in a high degree.' He says also, "That a friend of his persuaded him to come to me, and offer me somewhat to St. Paul's; and that he did come to me accordingly, and that I said I must have of him 1,000*l.* to St. Paul's; That he was not unwilling to give it, because his brewing was worth twice as much to him." My lords, I humbly desire your lordships to consider this part of the Charge well. First, What friend of his this was, that came so to him, he says not, nor do I know, and so have no possibility to examine. Secondly, He says not that I sent this friend of his to him, thus to advise him; and then his coming no way concerns me. Thirdly, when he was come upon this friend's persuasion, if he were willing to give 1,000*l.* to St. Paul's, in regard of his double gain from his Brew-house, as himself confesses: I do not see, under favour, what crime or oppression is in it. Lastly, I remember none of this, and let him well weigh his oath with himself; for I cannot call to mind one penny that he gave to St. Paul's; nor yet shall I ever think it a sin, to take 1,000*l.* to such a work, from any rich and able man that shall voluntarily offer it; especially upon hope of gaining twice as much.

To make this Charge the heavier, he says, I sent him to the Queen-Mother, who lay then at St. James's; and that there he was laboured by some about her to change his Religion, and then he should have all favour. This is a bold oath; let him look to it, for I sent him not. It may be I might tell him, that if the Queen-Mother were offended with the annoyance from his house, it would not be in my power to help him: which was true. And that about his Religion, was added to make your lordships think that I sent him thither for that purpose: but God be thanked, this witness says not any one word tending that way. And for the Queen-Mother, since she is thus mentioned, I shall crave leave to say two things: the one, That I did both in open council, and privately, oppose her coming into England, with all the strength I had; though little to my own ease, as I after found: the other, That after she was come, the lords of the council went in a body to do their duty to her; that time I could not but go; but never either before or after was I with her.—Then he concludes, That there was a *Capias* out for him, and that he was fain to make an escape by night; which he did to alderman Pennington, who very nobly succoured him privately in his house. All which concerns me nothing.

2. The other Witness is Mr. *Arnold*; who told as long a tale as this, to as little purpose. He speaks of three Brew-houses in Westminster all to be put down, or not brew with sea-coal; that secretary Windebank gave the order. Thus far it concerns not me. He added, that I told him they burnt sea-coal: I said, indeed, I was informed they did; and that I hope was no offence. He says, That upon sir John Banks's new Information, four lords were appointed to view the brew-houses, and what they burnt. But I was none of the four, nor did I make any report, for or against. He says, Mr. Attorney Banks came one day over to him, and told him that his house annoyed Lambeth, and that I sent him over. The truth is this; Mr. Attorney came one day over to dine with me at Lambeth, and walking in the garden before dinner, we were very sufficiently annoyed from a brew-house; the wind bringing over so much smoke, as made us leave the place. Upon this, Mr. Attorney asked me, why I would not shew myself more against those brew-houses, being more annoyed by them than any other? I replied, I would never be a means to undo any man, or put him from his trade, to free myself from smoke. And this Witness doth after confess, that I said the same words to himself. Mr. Attorney at our parting said, he would call in at the Brew-house: I left him to do as he pleased, but sent him not. And I humbly desire Mr. Attorney may be examined of the truth of this.

He farther says, That he came over to me to Lambeth, and confesses the Words before-mentioned; and that he offered me 10*l.* yearly to St. Paul's, and that I said he might give 20*l.* He says, That I sent him to Mr. Attorney; but withal told him, that if he found not such favour as I wished him, it was a sign he had more powerful adversaries than my friendship could take off. In all this I cannot see what fault I have committed. And I foretold him truth: for though the business were after referred to Mr. Attorney and myself, as himself says, yet we were not able to end it. Then he says, I would not suffer sir Edw. Powel, Master of the Requests, to deliver his Petition to the king. But first, this is but sir Edward Powel's Report, and so no Proof, unless he were produced to justify it. Secondly, the world knows I had no power in sir Edward; he would then willingly have delivered Petition, or any thing else, that he thought might hurt me: and the cause is known.

Lastly, he says, Mr. Attorney sent out a *Capias* for him; that the sheriff came by force to take him, and what hard shift he made to escape: That after, upon his Petition, the lords gave him six months time to provide himself elsewhere; and that he was fain to give 500*l.* bond not to brew there. To all this I then said, and say still, First, Here is no one thing charged upon me in particular. Secondly, here is not a word of my Advice or endeavour to set on Mr. Attorney, or to move the Lords to any thing against him. And whereas

it hath been urged, that my power was such, that I swayed the Lords to go my way; this cannot be said, without laying an imputation upon the Lords, as if they could so easily be overwrought by any one man and that against law: which is a most unworthy aspersion upon men of honour. And if all this were true, it is but Treason against a Brew-house. Nor yet may this be called slighting of any Evidence, which is but to answer home in my own just Defence. 'And out of this I gave my answer to Mr. Browne's summary Charge against me 'in the House of Commons, for that which 'concerned these two Brewers.'

And here, before I close this Day, give me leave, I beseech your Lordships, to observe two things: 1. That here have been 13 witnesses at least produced in their own cause. 2. That whereas here have been so many things urged this day about the Star-Chamber and the Council-Table; the act made this parliament, for the regulating of the one, and the taking away of the other, takes no notice of any thing past: and yet Acts past (and those joint-acts of the Council, and not mine) are urged as treasonable, or conducting to Treason, against me. Nay, the Act is so far from looking back, or making such offences treason, as that if any offend in future, and that several times, yet the act makes it but Misdemeanor, and prescribes punishments accordingly.

#### *The Fifth Day of my Hearing.*

Friday, March 22, 1643. The first Charge of this day was concerning the Indictment of Mr. Newcommin a minister at Colchester, for refusing to administer the Sacrament, but at the rails; and the prosecution which followed against Burrowes for this. The two witnesses of the particulars, are Burrowes and Mr. Aske.

1. The testimony which Burrowes gave, was, That Mr. Newcommin would not administer the Communion, but at the rail; that he indicted him for receiving it there; that the foreman threw it out, &c. If Mr. Newcommin did this, complaint might have been made of him; but howsoever here is no one word of any command from me. And it seems the factious malice of Burrowes was seen, that the foreman at first threw away the indictment. He says, That upon this he was called into the High-Commission; a warrant from me; his house beset; Stockdall left the Warrant with the mayor; a Habeas Corpus not obeyed. The warrant, by which he was detained, was from the High-Commission, not from me: and himself says, there were six or seven hands to the warrant. But then he says, my hand alone was to another warrant, which is impossible, for there must be three hands at the least, or no warrant can issue out. And all his Proof of this latter is, that he saw my hand; which I hope he may do, though other hands besides mine were to it. For the Habeas Corpus, if the mayor said (for so Burrowes adds) he would obey my warrant, rather than the king's writ, because it came first; he was extremely ill ad-

vised: but if a mayor of a town give an undiscree, or a worse answer, I hope that shall not be imputed to me. And if there be any thing in this business, why is not Stockdall the messenger produced, that knows those proceedings? Lastly, he speaks of a Letter sent to judge Crawley, and shewed to judge Hutton. But first, he says not that letter was sent by me, or by my means. Secondly, he names not the contents of the Letter; without which, no man can tell whether it charge any thing upon me or not. And until the Letter be produced, or sufficiently witnessed, (neither of which is offered) it is but like a written hearsay. And I humbly pray you to observe from himself, that the two reverend judges looking into the business, said, it was a mere cheat for money, and returned him back to Colchester: which is a proof too; that the Habeas Corpus was obeyed; for if he were not brought up before them, how could he be returned by them?

2. Then Mr. Aske, the second Witness, was produced. He said, there came players to town, and that some, which said they came from me, were taken in a Tavern upon Easter-Eve at unseasonable hours. I know not of any that were sent from me: but if any were, and kept any disorder in the town, especially at such a time, Mr. Aske did very well to question them. He says, That upon the matter I referred him twice to sir John Lambe, and that, at the second time, he found the plot was to make him an instrument about the rails, which he absolutely refused. I did refer him (and it may be twice) to sir John Lambe; but if sir John spake to him about the rails, he had no commission from me so to do. 'I understood Mr. Aske too well, to offer to make him an instrument in such a business. His zeal would have set the rails on fire, so soon as ever he had come near them.' [Frigidius dictum. W. S. A. C.]

Next he says, That Mr. Newcommin was indicted, as is aforesaid, and that Indictment found: That Letters missive were sent for him and his wife, by Stockdall. If letters missive by Stockdall, then they were sent by the High-Commission, whose joint act cannot be charged upon me: And if any thing can be proved, why is not Stockdall produced? He says, that he went into Holland to avoid the oath *ex officio*. The oath *ex officio* was then the common, and, for ought I yet know, then the legal course of that Court: so I could not help the tender of that oath unto them, had they staid and appeared. But the truth is, he was too guilty to appear; for his wife was a Separatist, and himself confesses that she came not to the Prayers of the Church. And as for him, I ever found him the great maintainer of all wilful opposition against the Church. He farther says, he came to me to Croydon, and that there I told him he might have put the Indictment against Mr. Newcommin in his pocket. Indeed, my Lords, if I did say so, I think I spake it truly. For if he had borne any respect to the reputation of the Clergy, I think

he might have pocketed it for one session, without any prejudice at all to the law, or any thing else. God knows, this is often done. And if thereupon I added, (as Mr. Aske says I did) That if he were so strictly set against Churchmen in the Temporal Courts, he must look for as strict proceedings in the High-Commission; I see no great crime in it: for we are as strictly bound to prosecute in the one, as he was in the other. And if his clerk (as he says) was attached, who read the Indictment, yet it is not said by himself, that he was attached for reading it. And if it were so, that some jurors were attached, and not Mr. Aske's clerk only, (as Mr. Browne pressed it in the sum of his charge) yet the answer comes all to one. For no witness says, these jurors were called into the high-commission for being jurors, or discharging that legal duty. And then I hope a man's being of a jury shall not excuse him from answering any crime in any court, that hath power to call him; provided he be not called off at the time of his service, or while he is under the privilege of that court, in which he is a juror. And according to this, I gave Mr. Browne my answer. And howsoever the attachment goes of course out from the commission, and not from me.'

II. The second Charge of this Day was about the Censure which fell on the inhabitants of Beckington in Somersetshire, about their refusing to remove the Communion-Table according to the order of their Diocesan; about which were produced three Witnesses, to whose Evidence I shall answer in order.

1. The first was *William Longe*, who says he was foreman of the jury, when these men were indicted for a riot; and that, as he conceives, the parson spake with the judge about it, which caused a sudden verdict. The parson of the place spake with the judge, and he conceives that produced a sudden verdict: first, he doth but conceive so, and that can make no Proof. If it did make proof, it is only against the parson, not against me. And if the parson speaking of it, did say, (as Mr. Longe affirms he did) That this Riot was like a Waldensian or Swisserland Commotion; he must answer for his own distempered language, the it cannot concern.

2. The second witness was *George Longe*. He says the bishop of Bath commanded the Communion-Table to be removed, and set at the upper end of the chancel; that the Church-Wardens refusing, were excommunicated: but he says withal, that they appealed to the Arches, and had remedy. Then he adds farther, That the bishop proceeded again, but the Church-Wardens would not remove it, saying it was an Innovation, and against law. But, my Lords, it is neither: and therefore these Church-Wardens were in a great contempt against their bishop, to the ill-example of all that country. And that it is no Innovation against law, appears by the Injunctions of queen Elizabeth, where it is commanded ex-

presently to be set there. The Words are; "The Holy Table in every Church" (not Cathedrals only) "shall be decently made, and set in the place where the Altar stood." Now all men know, that with us in England the altar stood North and South, at the upper end of the Chancel; and to set it East and West, had been cross the place where the Altar stood, and not in it. And this being law in the beginning of the Reformation, cannot now be an Innovation.

When they came to me again, (as they say they did) if I then told them they deserved to be laid by the heels for the contempt of their Bishop; under favour, my Lords, I spake truth. And give me leave, I beseech you, to tell you this: It began to be a general complaint, not of the bishop of Bath only, but of other bishops also, that they could do little or no service in their several countries, by reason of the Inhibitions which issued out of my courts to stay their Proceedings. And I wanted no good friends in court to tell the king as much, when any thing was complained of. By this I was brought into great streights: deny Appeals, I might not; frequent granting in my courts destroyed in a manner the Bishops Jurisdictions. In this difficulty, seeing the wilfulness of these men, and knowing they had received full benefit by their Appeal once already in the same case; I did refuse to hear any more of it, (unless there were new matter) but yet left them free to appeal to the delegates.

For Mr. Hughes, the parson there, if he gave ill words, or laid violent hands on any of his neighbours, it concerns not me; let him answer for what he hath said or done. It is farther said, That Mr. Hughes was with me at Windsor, and had letters from me to the Lord Chief Justice Finch. But this Witness delivers not this upon his own knowledge; I sent no Letter by him, nor did he see me send by any other: so this is merely a report, and he doth not so much as tell from whom. Yea, but then he says, That Mr. Morgan (a man inward with the Judge) told him, that the judge told him, that the little man had put a spoke in their cart; and thereupon (as he conceives) the petty-jury was changed. Here are, if your lordships mark them, two great Proofs. The one is the Witness's report of Mr. Morgan's report, that the Judge had said so of me: But why is not Mr. Morgan produced to clear this? The other is not the knowledge, but the conceit only of the Witness: He conceives, which I am confident cannot sway with your lordships for a Proof. 'Besides, were Mr. Morgan never so inward with that Judge, yet it follows not, that he must know all. And if that judge did mean me, (for name me he did not) he did me the more wrong. For I never desired any thing of any judge, him or other, but what was according to law. Nay, I so expressed myself, as that if by mistake or mis-information I had desired any thing which was not according to law, I humbly desired my motion might be, as if it had never been made.

3. The third Witness is Mr. Jo. Ash. That which this gentleman says, is, That sir John Lambe told, that the man which came about that business, could have no Appeal admitted without me; and that if he would be so troublesome, he should be laid by the heels. I have given your lordships an account, why he could not have an Appeal without me: he had had the benefit of an Appeal before in the same cause. And for this Witness, he delivers no knowledge of his own; but only he says, the man employed related it to him: so it is a relation, no Proof. He says, the Penance was enjoined them in three Churches. And truly, my lords, their disobedience to their Bishop was great; but if the Penance enjoined were too heavy, it was the act of their own bishop, not mine. Then he says, That the lord Finch told him, another powerful hand was upon him; intimating me. 1. This is no knowledge of the witness, but a speech of the lord Finch. 2. If the lord Finch did say so of a powerful hand, he wronged me much, but himself more, to confess he could be drawn awry in judgment. 3. This Witness says not that he named me, but that he intimated me: I pray your lordships judgment, what a forward witness this man is, that can upon oath deliver what is intimated and of whom.

He says farther, That upon Petition to sir William Portman for some assistance, the bishop of Bath laid all upon me; and that when himself came to me at the Tower; since my restraint, I told him the bishop of Bath did like an obedient bishop to his metropolitan. For this, my lords, there is no proof, that the bishop laid this business upon me, but sir William Portman's report. Sir William is a worthy gentleman, why is not he produced? Why is not the bishop, that is said to lay all upon me, brought into the court, that he may clear himself and me, if he had said it not; or that I may make him ashamed, if he said it? For it is confessed, that in the first business, the churchwardens had their remedy by their Appeal to me; but that then the bishop began again, as the former witness declared. Nor knew I any thing of this business till the Appeal came. As for my Answer to himself, that, under favour, is quite mistaken: For I did not say, That in this particular, but that in his general proceedings in his diocese, the bishop of Bath carried himself like an obedient bishop to his metropolitan. Nor can my words be drawn to mean this particular: For how could I say that in this particular he carried himself like an obedient bishop to me, when after remedy given to these men by their first Appeal into my court, he began with them again upon the same cause? Besides, my Lords, this is not the first time Mr. Ash hath mistaken me. 'Mr. Browne, in summing up this Charge against me, falls twice very heavily upon this business of Beckington. 'First, For the point of Religion: And there he quoted a passage out of my speech in the Star-Chamber, where do I reserve the interference of the standing of the Communion

'Table either way; and yet (saith he) they were thus heavily sentenced for that which I myself hold indifferent. But 1. This Sentence was laid upon them by their own bishop, not by me. 2. The more indifferent the thing was, the greater was their contumacy to disobey their ordinary. And had it not been a thing so indifferent, and without danger of advancing Popery, would queen Elizabeth, who banished popery out of the kingdom, have endured it in her own chapel all her time? 3. The heaviness of the Sentence, so much complained of, was but to confess their contumacy in three churches of the diocese, to example other mens obedience. Secondly, For the same point, as it contained matter against law, I answered Mr. Browne, as I had before answered the lords.'

III. The 3rd Charge was about certain houses given to St. Edmund's Lombard-Street, where old Mr. Pagget is parson. The witnesses are two.

1. The first is Mr. Symms, who says, That after a verdict, Mr. Pagett the incumbent, upon a pretence that these tenements were church-land, got a reference to the lord bishop of London, then Lord-Treasurer, and myself. My Lords, we procured not the reference; but when it was brought to us under the king's hand, we could not refuse to sit upon it. Upon full hearing, we were satisfied that the cause was not rightly stated; and therefore we referred them to the law again for another Trial, and for costs to the barons of that court. And this was the Answer which I gave to Mr. Browne, when he instanced in this case.' He says the houses were given to superstitious uses: But possessions are not to be carried away for saying so. If men may get land from others by saying it was given to superstitious uses, they may get an easy purchase. And Mr. Symms is here in his own case. But whether the houses were given to superstitious uses or not, is the thing to be tried in law, and not to be pleaded to us. He complains that I would not hear his Petition alone: And surely, my Lords, I had no reason, since it was referred to another with me. And yet I see, though I was not in the reference alone, nor would hear it alone, yet I must be alone in the Treason. And here I desired that Mr. Pagett, the incumbent, might be heard.

2. The other Witness was Mr. Bernard: He says he was present at the hearing: and that Mr. Symms said he was undone, if he must go to a new Trial. But, my Lords, so may men say, that by their troublesomeness in law-suits go about to undo others. He says that Mr. Pagett named his own Referrees; If that be so, it is no fault of mine. He says the reference was made to us only to certify, not to make any Order in it: If this be so, here is no Proof so much as offered that we did not certify, as we were required, and then had power given to order it; which we did. And he confesses the counsel on both sides had full hearing before ought was done.

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IV. The fourth Charge of this day was concerning the imprisonment of one Grafton, an upholsterer in London. The Witnesses three; Of which,

1. The first is Grafton, in his own cause: And it is much if he cannot tell a plausible tale for himself. He says first, That 12 years ago he was committed, and fined 50*l*. by other Commissioners. By others, my Lords; therefore not by me: And an act of the high-commission, by his own words, it appears to be. He says, He was continued in prison by my procurement, as he verily believes. First, "as he verily believes" is no Proof. And the ground of his belief is as weak: For he gives no reason of it but this, That Dr. Ryves, the king's Advocate, spake with the barons; but he doth not say about what, or from whom. He adds farther, That Mr. Ingram, Keeper of the Fleet, would not give way to his release, notwithstanding the barons orders, till he heard from me. Here is no man produced that heard Mr. Ingram say so; nor is Mr. Ingram himself brought to testify. Lastly, he says, That he then made means in court, and so repaired to the barons again, but all in vain; and that baron Trevor cried out, "O the Bishop! O the Bishop!" First, here is a confession of means in court made to the Judges: So belike they may have means made to them, so it be not by me. For the particular, I did humbly desire the baron, being then present, might be asked. He was asked: He blushed, and fumbled. The lords laughed, and I could not hear what he said.

2. The second Witness was Mr. Lenthall. But he said nothing, but that there was an Order for Grafton's liberty; which is not denied.

3. The third was Mr. Rivett. He says, That Mr. Ingram said that Grafton was a Brownist, and must be brought into the Fleet again, because he did much hurt among the king's subjects. This is a bare report of a Speech of Mr. Ingram; it no ways concerns me. And a Separatist he is from the Church of England: But whether a Brownist, or no, I cannot tell, there are so many sects, (God help us.) And much harm he hath done among weak people: For most true it is, which St. Cyril observes, *πρὸς τὸν Ἀβελὸν ὅτι γίνεται τὴν λαὸν, ἵνα ὑπακούσιν ὅτι πταίει ἡ ἐκκλησία*, "That the devil prepares these schismatical separations, that so much the more easily the enemy may be received." As for this man, he was in his way cunning enough: for under pretence that he suffered by me, he got madam Vantlet, and other of the French, to negotiate with the queen's majesty in his behalf. And this I found, that sometimes, when her majesty knew not of it, they sent to the Barons for favour for him. And yet I never heard that baron Trevor ever cried out, "O the French! O the French!" Nor can I tell what stopped his mouth in this cry, and opened it so wide in the other, when we moved to defend ourselves and our proceedings. Where, I hum-

bly desire, this passage of the law may be considered; in the case of depraving the Common-Prayer-Book, (so much scorned and vilified at this day) and for not coming to church. The words of the law are, "For due examination hereof, the queen's most excellent majesty, the lords temporal, and all the commons in this present parliament assembled, do in God's name earnestly require and charge all the Arch-bishops, bishops, and other ordinaries, that they shall endeavour, to the uttermost of their knowledge, that the due and true execution hereof may be had throughout their diocesses and charges, as they will answer before God, &c." 1 Eliz. c. 2. Now, if I do not this, here is an apparent breach of the law: And if I do it against the common and great depraver of this Book, then the Judge, who by this law should assist me, cries, "O the Bishop!" And this answer I gave Mr. Browne, when he summed his charge against me.

V. The fifth Charge of this day was Mr. John Ward's Case, in a suit about Simony in the High-Commission.

He says, (for he also is in his own cause) That upon a pretence of a lapse by Simony, I procured a Presentation from the king to the church of Dinnington. His majesty trusted me with the titles, which did accrue to him in that kind: And because Simony had been so rife, commanded me to be careful I might not betray his trust. And therefore the Simony being offered to be proved, I procured his majesty's presentation for trial of the title. And this I conceive was no offence; though this be that which he calls the Leaviness of my hand upon him. He farther says, That I sent to the bishop of Norwich to admit the king's clerk, the Church being void, 7 Junii 1638. Nor do I yet see, my Lords, what crime it is in me, trusted especially as before, to send to the Bishop to admit when the church is void: Many Lay-Patrons do that, upon allegation of Simony, before proof. And Mr. Bland, produced as a Witness also, says, That the lord Goring prevailed with the lord bishop of Norwich not to admit. And I hope an arch-bishop, and trusted therein by his majesty, may as lawfully write to the Ordinary for admission of the king's clerk, as any Lay-Lord may write against it. But Mr. Ward says nothing to this of the lord Goring; but adds, That sir John Rowe prevented this admission by a *Ne Admittas*, Junii 12. And that thereupon I said, "It was to no purpose for us to sit there, if after a long trial, and judgment given, all might be stopped." If I did say so, I think it is a manifest truth that I spake; for it were far better not to have Simony tried at all in ecclesiastical courts, than after a long trial to have it called off into Westminster-hall, to the double charge and trouble of the subject. But if the law will have it otherwise, we cannot help that. Nor is this Expression of mine any violation of the law.

Then he says, a Letter was directed from the Court of the High-Commission to the Judges, to revoke the *Ne Admittas*; and that I was forward to have the letter sent. How forward soever I was, yet it is confessed the Letter was sent by the Court, not by me; and let the Letter be produced, it shall therein appear, that it was not to revoke the *Ne Admittas*, but to desire the Judges to consider, whether it were not fit to be revoked, considering the church was not void till Jun. 14. And it hath been usual in that Court, to write or send some of their body to the temporal Judges, where they conceive there hath been a misinformation, or a mistake in the cause; the Judges being still free to judge according to law, both for the one and the other. And here he confesses the writ of *Ne Admittas* was revoked by three judges, and therefore I think legally.

But here he hopes he hath found me in a contradiction. For when I writ to the bishop of Norwich, Junii 7, 1638, I there said the church was void; whereas this Letter to the Judges says it was not void till Junii 14. But here is no contradiction at all: For after the Trial past, and the Simony proved, the church is void to so much as the Bishop's giving of institution; and so I writ Junii 7. But till the Sentence was pronounced in open court, and read, the Church was not void, as touching those legalities, which, as I humbly conceive, do not till then take place in Westminster-Hall: And the reading of the Sentence was not till Junii 14. However, if I were mistaken in my own private Letter to the Bishop, yet that was better thought on in the letter from the High-Commission to the judges. He says, lastly, That upon a *Quare Impedit*, after taken forth, it was found that the king had no right. Why, my Lords, if different courts judge differently of Simony, I hope that shall not be imputed to me. In the court where I sat, I judged according to my conscience, and the law, and the proof, as it appeared to me. And for Dr. Ryves's Letter, which he says was sent to the Cursitor to stop the *Ne Admittas*, let Dr. Ryves answer it. The Witness himself confesses that Dr. Ryves says the command to the Cursitor was from the Lord Keeper, not from me. And here ends the Treason against Mr. Ward; and, till now, I did not think any could have been committed against a minister.

VI. Then followed the Case of Ferdinando Adams, his Excommunication, and the Suits which followed it: As it will appear by the Witnesses following, which were four.

1. The first was Mr. Henry Dade, the Commissary then, before whom the Cause began. And he confesses, He did excommunicate Adams for not blotting out a Sentence of Scripture, which the said Adams had caused to be written upon the church-wall, as in many churches Sentences of Scripture are writteu. But he tells your lordships too, that this Sentence was, "My house shall be called a house of prayer: but ye have made it a den of thieves."

[Mat. 21. 13.] The Commissary's Court was kept, as usually it is, at or towards the West end of the church; and just over the court Adams had written this Sentence upon the wall, merely to put a scorn and scandal, though I hope an unjust one, upon that court. 'He was commanded to blot it out. He would not, because it was Scripture; as if a man might not revile and slander, nay, speak Treason too, if he will be so wicked, and all in Scripture-Phrase: Witness that lewd speech lately uttered, "To your Tents, O Israel, &c." [Reg. 12. 16.] Upon this he was excommunicated; and I cannot but think he well deserved it. For the suit which followed against Mr. Dade in the Star-Chamber; the motion that Mr. Attorney would leave him to the common prosecutor, and not follow it in his own name, himself confesses, was made in open court by Mr. Bierly, and that from me he had no instructions at all.

2. The second Witness is *Adams* in his own cause. To the place of Scripture I have spoken already. And the next that he says, is, That sir Nath. Brent, in my visitation, commanded the setting of the Communion-Table at the upper end of the Chancel; That upon his not blotting out the passage of Scripture, he had an action: and that his Solicitor was committed by J. Jones, till he relinquished his suit. In all this there is not one word of any thing that I did. And for that which sir Nath. Brent did about placing the Communion-Table, it is answered before. [In the second Charge of this day.] He says also, That when he saw he must prosecute his suit against commissary Dade in his own name, he left the kingdom. And surely, my Lords, if he would leave the kingdom rather than prosecute his cause in his own name, it is more than a sign, that his cause was not very good.

3. The third Witness was *Mr. Cockshot*, one of Mr. Attorney Banks's servants. He says, That Adams moved him, and he Mr. Attorney; and that thereupon Mr. Attorney gave his warrant against Dade. By which your lordships may see how active Mr. Cockshot was against a church officer, and in so foul a Scandal. He says also, That Mr. Dade came to Mr. Attorney, and told him, that I did not think it fit, a prosecution in such a cause should be followed in Mr. Attorney's name. First, it is true, I did not think it fit; nor did Mr. Attorney himself, when, upon Mr. Bierly's motion, he fully understood it. Secondly, The cause being so scandalous to a church officer, I conceive I might so say to Mr. Dade, or any other without offence. But then, Thirdly, here's not one word that I sent Mr. Dade to Mr. Attorney about it: he came and used my name, so Mr. Cockshot says; but not one word that I sent him. Lastly, He says, That Mr. Attorney told him, that I blamed him for the business, and that thereupon he chid this Witness, and sent him to me; and that I rebuked him for it: but he particularly remembers not what I said. Nor truly, my lords, do I remember any

of this. But if I did blame Mr. Attorney for lending his name in such a scandalous cause as this, I did, as I conceive, what became me. And if he chid his man, he did what became him. And if I rebuked Mr. Cockshot when he was sent to me, sure he deserved it; and it seems it was with no great sharpness, that he cannot remember any thing of it. And so I answered Mr. Brown when he instanced in 'this.'

4. The last Witness was *Mr. Prynne*, who says, no Appeal was left him. But that, under favour, cannot be: For if my Courts refused him (which is more than I know) he might have appealed to the Delegates. He says, That he advised Adams to an action of the case; that he blamed Lechford for deserting the suit, and that he advised him to go to Mr. Attorney. So here is no assistance wanting to Adams, but the church-officer Mr. Dade must have none. Yet I blame not Mr. Prynne, because he says he did it as his counsel. He says farther, That when Adams was put to prefer his Bill in his own name, that then the Excommunication was pleaded in bar: But he doth not say it was pleaded by me, or my advice; nor do I hear him say, it was unjustly pleaded. And had not Adams been wilful, he might have taken off the excommunication, and then proceeded as it had pleased him.

VII. Then the Charge went on against me, about the stop of Mr. Bagshawe the Reader of the Middle-Temple. The Witnesses are two lawyers, who accompanied Mr. Bagshawe to Lambeth, Mr. White and Mr. Pepys. They say, That Mr. Bagshawe insisted upon these two points; First, That a Parliament might be held without Bishops; and, secondly, That Bishops might not meddle in civil affairs. My Lords, these things are now settled by an act of this parliament, but then they were not. And I conceive, under favour, that Mr. Bagshawe (the craziness of these times considered) might have bestowed his time better upon some other argument: And sure no man can think, that either myself, or any Church-Governor, could approve his Judgment in that particular. And whereas they say, That the Lord Keeper Finch, and the Lord Privy Seal told them, that I was the man that complained of it to the king and the lords: It is most true, I did so; and I think I had been much to blame if I had not done it. And if when they came over to Lambeth about it, they heard me tell Mr. Bagshawe (as they also say they did) that he should answer it in the High-Commission Court next term; I humbly conceive this no great offence; but out of all question no Treason to threaten the High-Commission to a Reader of the Inns of Court.

VIII. The last Charge of this day was concerning the Lord Chief Justice Richardson, and what he suffered for putting down Wakes and other disorderly Meetings in Somersetshire, at the Assizes there holden.

The single witness to this is *Edward Richard-*

son, a (kinsman of the Judge's, as I suppose.) He says, That complaints were made to the Judge of Wakes and Feasts of dedication; That his majesty writ Letters about it to sir Robert Phillips and others. They certify a command comes by the Lord Keeper to revoke the Order next assizes. First, It is not done. Then by command from the Lords of the Council, the Judge, upon that second command, revokes it; but, as it is certified, not fitly. In all this here is not one word that concerns me. Then he says, That upon this last certificate, the business was referred to the Lord Marshal and myself, and the Judge put from that circuit. I cannot now remember what report we made: But whatever it was, the Lord Marshal agreed to it as well as I. Then a Letter of mine was produced of Octob. 4, 1633. But the Letter being openly read, nothing was found amiss in it. And, under your lordship's favour, I am still of opinion, that there is no reason the Feasts should be taken away for some abuses in them; and those such as every justice of peace is able by law to remedy, if he will do his duty. Else by this kind of proceeding, we may go back to the old cure, and remedy drunkenness by rooting out all the vines; the wine of whose fruit causes it. As for the Prentences, which this Witness spake of; they were none of mine, as appears evidently by the Letter itself.

As an Appendix to these, was added a Letter of my secretary Mr. Dell, to sir John Bridgman, Chief Justice of Chester, in a Cause of one Ed. Morris. It was (as I think it appears) upon an Incroachment made in the Marches Court upon the church; in which case, I conceive, by my place, I may write to any judge for information: And there is nothing peremptory in the Letter. The words are ("If things be rightly suggested"). But howsoever, the Letter is Dell's; and if he have done amiss in it, he is here present to answer. And it will be a hard business with men of honour, if when any lord shall command his Secretary to write, and give him directions for the matter, he shall afterwards be answerable for every slip of his Secretary's pen; especially in so high a way, as it is charged on me. But the best is, here is nothing amiss that I know.

*The Sixth Day of my Hearing.*

I. Thursday March 28, 1644. The first Charge of this day concerned the Censure, Deprivation and Imprisonment of Mr. Huntly. The Witnesses produced are four.

1. Mr. Merifield comes on first. He says, That himself was committed by the Lords of the Council; and that there I said, That he the said Merifield deserved to be laid by the heels, and to be called into the Star-Chamber. This man was (as I take it) Mr. Huntly's Attorney; and if I did speak those Words concerning him, surely his words and carriage deserved it; else I am confident the lords would not have committed him for a naked, and an orderly following of his Client's cause; espe-

cially in the presence of two Judges, justice Jones and justice Crook, who, he says himself, were present. And this Answer I gave Mr. Brown; who, in the sum of his Charge against me, omitted not this Case of Mr. Merifield; for so was this Attorney's name.

2. The next Witness is Mr. Huntly himself. He says, that I said unto him, That he being an Ecclesiastical person, and in an Ecclesiastical cause, ought not to decline the Church-Censure. Then followed his Imprisonment, and his action for false imprisonment, and the rest of his proceedings. In all which the High Commission proceeded against him, and he proceeded against the High Commissioners; nothing done by me, or against me, in particular. So nothing of his charge falls upon me, but the Words; and for them, they are very far from offering to exempt any clergyman, him, or other, from the temporal laws, if things cognizable by them. But I humbly conceive, his Oath of Canonical Obedience considered, that he ought not to decline the Ecclesiastical judicature, in things merely Ecclesiastical. And if in this my judgment I do err, yet it is error without crime; and surely, my lords, no Treason.

3. The third Witness is John Dillingham. He says, That Mr. Huntly moved before the Lord Chief Justice Richardson; and that the Judge replied, By his faith he durst not do him justice. To this, my Lords, I answer: Here is never a word that he durst not do him justice for fear of me; that is not said by the Witness, and ought not, by conjectures, to be enforced against me. But howsoever, if he spake these Words; the more shame for him.\* He is dead, and I will not rake into his grave; but if he so spake, it seems he was none of those Judges, which Jethro advised Moses to make for the ease of himself, and the good of the people, Exod. xviii. 21. Mr. Browne, in summing up of his Charge, pressed this Speech of the Judge hard upon me; which inforces me to add thus much more, That this Witness lays it hard upon the Judge, not upon me: for no Proof is offered, that I did solicit him in that cause: and if he wanted courage to do justice, why sat he there?

4. The fourth Witness was Mr. Pit, a sworn officer; he says, The Order concerning Mr. Huntly was from the Council, and that there was then a full Board; so this was no single act of mine. He says farther, That he was not simply prohibited, but only till he had acquainted the Lord Keeper with it, or those Judges whose courts it concerned. And this was so ordered, as I conceive, to remedy the tedious and troublesome interpositions of Mr. Huntly. Where it is not unfit for me to inform your lordships, that this cause of Mr. Huntly's was in my predecessor archbishop Abbot's time; I had nothing to do in it, but as any

\* See Luders's "Considerations on the Law of High Treason in the article of Levying War," 126.

other ordinary commissioner then present had.

And here, at the entering upon my Answers this day, I did in general put the lords in mind, That nothing of late times was done, either in Star-Chamber, or at Council-Table, which was not done in king James and queen Elizabeth's times, before I was born; and that many Parliaments have been since, and no man accused of Misdemeanor for things done there, much less of Treason. Nor is there any one Witness that hath charged me, That that which I did, was to overthrow the Laws, or to introduce Arbitrary Government: 'That is only the construction made on it at the Bar; which, as it is without all Proof for any such intention, so I am confident they shall answer for it at another Bar, and for something else in these Proceedings.'

II. Then followed the Charge about Prohibitions; in which are many Particulars, which I shall take in order, as the several Witnesses charged them upon me.

1. The first is Mr. *Prynn*. He says, That in an. 4to Caroli, he brought a Prohibition, and that thereupon I should say, "Doth the King give us power, and then are we prohibited? Let us go and complain." First, If this were anno 4 Caroli, it was long before the Article; so that I could neither expect the Charge, nor provide the Answer. Secondly, I humbly conceive there is no Offence in the Words: For if a Prohibition be unjustly granted upon Misinformation, or otherwise; or if we do probably conceive it is ill-grounded, I hope it is no sin to complain of it to the king, the Fountain of Justice in both Courts. Yea, but he says farther, that I said I would lay him by the heels that brought the next: 2. And this Mr. Burton witnesses with him. First, If I did say so, they were but a few hasty words; for upon second thoughts it was not done. Next, I desire your lordships to consider what manner of Witness Mr. Burton is; who confesses here before your lordships, that he brought the next with a purpose to tempt me: You know whose office that is; and so Mr. Burton hath abundantly shewed himself, and proclaimed his religion.

3. As for Mr. *Combs*, he says just the same with Mr. *Prynn*, and I give the same Answer.

Then about taking down of a Pew in a Church in London, (my Notes are uncertain for the name) which pew was set above the Communion-Table; that I required to have it pulled down; that they came to me to have an Order for it: and that thereupon I should say, "You desire an Order of Court, that you may have it to shew, and get a Prohibition; but I will break the back of Prohibitions, or they shall break mine." 4, 5. And this is jointly witnessed by Mr. *Pocock* and Mr. *Langham*: and this they say was 13 or 14 years ago. Excellent memories, that can punctually swear words so long after! But, my Lords, I confess to your lordships, I could never like, that Seats should be set above the Communion-Table:

if that be an error in me, be it so. For the Words, I did not speak them of Prohibitions in general, but of such as I did conceive very illegal; as, for ought I yet know, this must have been. 'And this was the Answer which I gave Mr. Browne, when, in summing up the Charge, he instanced in this against me.' 6. To these Rowland Toinson adds new Words; "That I wondered who durst grant a Prohibition, the High Commission Court being above all." But he confesses, he knows not the time when this was spoken. Let him look to his Oath, for I am as confident he knows not the thing. And I further believe, that neither he, nor any the rest of my Accusers think me so ignorant, as to say the High Commission Court was above all.

7. *Francis Nicolas* says, That about four years since he delivered a Prohibition, and was committed for it. 8. To this, Quaterman comes in and says more than *Nicolas* himself: for he says, he delivered it in upon a stick, and was committed for it. First, if he were committed, it was not for bringing the Prohibition, but for his unmannerly delivery of it; and to reach it into the Court upon a stick to call the people to see it, was no handsome way of delivery. And one that brought a Prohibition (whether this man or no, I cannot certainly say) threw it with that violent scorn into the Court, that it bounded on the table, and hit me on the breast, as I sat in Court. Howsoever his commitment was the act of the Court, not mine: and for Quaterman, he is an exasperated man against me and that Court, as hath appeared to the world many ways.

9. Mr. *Edwards* was called up next; and he says, It was a common thing to lay them by the heels which brought Prohibitions. And they were commonly brought by bold impudent men, picked out of purpose to affront the Court. And then if the Court made their imprisonment as common as they their rudeness, where is the fault? And I pray mark, this is still the act of the Court, not mine.

10. Mr. *Welden* says, That there was a command given to lay hold of a man, which brought a Prohibition: but more he says not. Nor did he offer to make himself Judge of the justice of the Court in that behalf. And considering what affronts have been put upon the court of High-Commission by the bringers of Prohibitions, I hope it shall not be accounted a crime to stay him that brings it, till the Prohibition be seen and considered.

11. The next witness is Mr. *Ward*, 'and he is an angry witness, for his cause before mentioned about simony.' That which he says, is, That Ann. 1638, he that brought a Prohibition in a cause of Mr. Foettroughts, was laid by the heels: but he himself confesses, the Court then declared, that they were affronted by him; and then he was punished for that Misdemeanor in his carriage, not for bringing the Prohibition. He says farther, That I directed some Commissioners to attend the Judges about it, and that the party had no

benefit by his Prohibition. For my directing attendance upon the Judges, I think I did what well became me; for there came a rule before the Prohibition, which required the Court so to do: 'And Mr. Prynne objected, because this was not done; and now I am accused, because I gave direction to do it.' And if the party had no benefit by his Prohibition, it must needs follow, that either the Judges were satisfied by our Information of the Cause; or if not, that they did Mr. Fostroughts the wrong, and not we.

12. The last Witness about Prohibitions, was Mr. Wheeler. He says, that in a Sermon of mine long since, I used these words; "They which grant Prohibitions to the disturbance of the Church's Right, God will prohibit their entrance into the kingdom of Heaven:" and he says he writ down the words, that he might remember them. If this gentleman will tell me what Text I then preached on, I will look upon my Sermon, (if that, with my other Papers, be not taken from me) and shew the place. In the mean time, with that limitation with which he confesses I spake them, I conceive there is no fault at all in the words. For it will be found no small fault in Judges to grant Prohibitions to the disturbance of the Rights of the Church, which no law of God or man warrants them to do. So the words I spake, must needs be understood of illegal Prohibitions. For they which are legal, do only stop the Church from doing wrong, but do no wrong to the Church by disturbing her rights. 'Mr. Browne charged this Sermon-Note upon me also, and I gave him this Answer. Nevertheless, I cannot but be sorry to hear it from Mr. Wheeler's own mouth, that he was so careful to write this Passage, and so ready to come to witness it against me, considering how many years I have known him, and how freely he hath often come to my table, and been welcome to me; yet never told me, this passage in my Sermon troubled him. It seems some malignity or other laid it up against this wet day.'

Here, having thus answered all Particulars, I humbly craved leave of their lordships, to inform them some few things concerning Prohibitions. As first, that there was a great contestation about them, between my predecessor, Archbishop Bancroft, and the then Judges, and this before king James and the Lords of the Council; and Mr. Attorney Hobart pleaded for the Church against them. Sir Henry Martin gave me copies of all those Papers on both sides. No final end made, that I could ever hear of. This calling them all in question, was far more than ever was done by me, or in my time; and yet no Accusation at all, much less any of Treason, put up against Archbishop Bancroft for this. Secondly, I have here Papers\* attested of all the Prohibitions, which have been admitted in my Courts of Archies,

and Audience; and I find, there are as many (if not more) admitted in my seven years time, as in any seven years of my predecessor Archbishop Abbot. And these Papers I delivered into the Court. As for the High-Commission, the Records are all taken from us; else I make no doubt, but it would soon appear by them, that as many have been admitted there also. Thirdly, There is a great difference touching Prohibitions, and the sending of them, since the times of Reformation, and before. For before, the Bishops Courts were kept under a foreign power; and there were then weighty reasons for Prohibitions, both in regard of the King's Power, and the Subjects indemnity. But since the Reformation, all power exercised in the Spiritual Courts is from the king, as well as the Temporal; so that now there neither is nor can be so much cause as formerly was. And yet all that I did humbly and earnestly desire, was, that some known bounds might be set to each Court, that the Subject might not, to his great trouble and expence, be hurried, as now he was, from one court to another. And here I desired a *Salvo*, till I might bring archbishop Parker's Book,\* to shew his Judgment in this point, in the beginning of the Reformation, if it shall be thought needful. 'According to whose Judgment (and he proves it at large) there is open wrong done to the Ecclesiastical Jurisdiction by Prohibitions.'

III. The next Charge is about my undue taking of Gifts: a Charge which I confess I did not think to meet here. And I must and do humbly desire your lordships to remember, that till this day I have not been accused, in the least, for doing any thing corruptly: and if I would have had any thing to do in the base dirty business of Bribery, I needed not have been in such want as now I am. But my innocence is far more to my comfort, than any wealth so gotten could have been: for I cannot forget that of Job, That "Fire should consume the Tabernacle of Bribery." (Job. xv. 34.) And in the Roman Story, when P. Rutilius, a man *Summa Innocentia*, of greatest integrity, was accused, condemned, and banished, it is observed, by the Story, that he suffered all this not for Bribery, of which he was not guilty, but *ob Invidiam*, for envy; against which, when it rages, no innocence, no worth of any man is able to stand.' (Calvis. Chro. p. 251.)

1. But to come to the Particulars: The first is the Case of sir Edward Gresham's Son, unhappily married against his father's will; a suit in the High-Commission about it; and that there he had but 50*l*. Damages given him. That was no fault of mine: My Vote gave him more; but it was carried against me. The bond of 200*l*. which was taken according to course in the court, (Can. Ec. Ang. 101.) was demanded of me by sir Edward, to help himself that way; and it is confessed I granted it.

\* Sir Timothy Baldwin hath these Papers. W. S. A. C.

\* Ma. Parkeri Antiq. Britan. in vita Joh. Stafford. p. 326, 327.

But then it is charged, That in my reference to sir John Lambeth, to deliver him the bond, I required him to demand one half of the forfeiture of the bond toward the Repair of St. Paul's. It is true, I did so: but, 1st, I desire it may be considered, that it was wholly in my power, whether I would have delivered him the Bond, or not. 2dly, That upon this gross abuse, I might have sued the bond in my own name, and bestowed the money upon what charitable uses I had thought fit. 3dly, That I did nothing herein but what the letters-patent for Repair of St. Paul's gave me power to do. 4thly, That this is the third time St. Paul's is urged against me: which I am not sorry for; because I desire (since it is once moved) it may be sifted to the uttermost. And whereas, to make all Ecclesiastical Proceedings the more odious, it was urged, That the Rubric in the Common-Prayer Book mentions no Licence, but Asking of Banes: That Rubric is to be understood where no licence is granted: for else no licence at all for Marriage without banes-asking can be good; which is against the common both law and practice of the kingdom. (Can. 62, Ec. Ang.)

2. The second Particular was charged by one Mr. Stone, of London; who said, He sent into Lambeth two butts of sack, in a cause of some Chester-men, whom it was then in my power to relieve, and mitigate their Fine set upon them in the High-Commission at York, about Mr. Prynne's entertainment, as he passed that way; and that this sack was sent in before my Composition with him what should be mitigated, and so before my return of the Fine mitigated into the Exchequer. The business, my Lords, was thus: His majesty having taken the Repair of the West-end of St. Paul's to himself, granted me to that end all the Fines in the High-Commission Court, both here and at York, and left the power of mitigation in me. The Chester-men, which this Witness speaks of, were deeply sentenced at York for some Misdemeanors about Mr. Prynne, then lately sentenced in the Star-Chamber. One or more of them were debtors to this Mr. Stone, to the value of near 3,000*l*. (as he said.) These men, for fear of the Sentence, kept themselves close, and gave Mr. Stone to know how it was with them; and that if he could not get me to moderate the Fine, they would away, and save themselves, (for they had now heard the power was in me.) Upon this, Mr. Stone, to save his own debt of 3,000*l*. sends his son-in-law Mr. Wheat and Dr. Bailie, men that were bred in the college of St. John under me, and had ever since good interest in me, to desire my favour. I at first thought this a pretence, and was willing to preserve to St. Paul's as much as fairly I might. But at last, upon their earnest pleading that the men were not rich, and that Mr. Stone was like (without any fault of his) to be so much damnified, I mitigated their Fines, which were in all above 1,000*l*. to 200*l*. I had great thanks of all hands; and was told from the Chester-men, that they heartily wished

I had the hearing of their cause from the beginning. While Mr. Wheat and his brother Dr. Bailie were soliciting me for favour to Mr. Stone, he thinks upon sending sack into my house, and comes to my Steward about it. My Steward acquaints me with it. I gave him absolute command not to receive it, nor any thing from any man that had business before me: so he refuses to admit of any. Mr. Stone presses him again, and tells him he had no relation to the Chester-Mens Cause; but would give it for the great favour I had always shewed to his son-in-law. But still I commanded my Steward to receive none. When Mr. Stone saw he could not fasten it, he watches a time when my steward was out of town, and myself at court, and brings in his sack, and tells the yeoman of my wine-cellar he hath leave to lay it in. My steward comes home, finds the sack in the cellar; tells me of it: I commanded it should be taken out, and carried back. Then Mr. Stone comes, intreats he may not be so disgraced; protests, as before, that he did it merely for my great favour to his son-in-law; and that he had no relation to the Chester-Mens business: and so after he protested to myself, meeting me in a morning, as I was going over to the Star-Chamber. Yet afterwards this religious professor (for so he carries himself) goes home, and puts the price of the sack upon the Chester-Mens Account. Hereupon they complain to the House of Commons; and Stone is their Witness.

This is the truth of this business, as I shall answer it to God. 'And whether this do not look like a thing plotted by the Faction, so much embittered against me, let understanding men judge.' Mr. Wheat, his son-in-law, was present in Court, and there avowed that he transacted the business with me, and that he went not out of town till I had agreed to the Mitigation; that in all that time there was no tender of sack, or any thing else, unto me; and he and Dr. Bailie were the only men with whom I transacted the whole business. 'And so much could Dr. Bailie also witness, but that, as the times are, I could not bring him from Oxford.' With Mr. Stone himself I never treated. For my Steward, he is dead three years since, who could have been my Witness clean thorough the business. And when I pressed Mr. Stone at the bar with the Protestation which he made to me, that he had no relation herein to the Chester men, he that remembered every circumstance else, said he remembered not that. Then I offered to take my voluntary oath of the truth of it; but that was not admitted. Then it was pressed, That this Bribe must needs be before the agreement; for he says the sack was sent into my house —, and the Mitigation of the Fine into the Exchequer not till —. But that is nothing: for my agreement was passed, and I meddled no more with it. Yea, but he says, that Mr. Holford, my servant, had 40*l*. more than I agreed upon, before he would finish their business. Mr. Holford was the king's

officer for those returns into the Exchequer: and if after my agreement made, he either unduly delayed their business, or corruptly took any money from them, he is living, and must answer for his own fault; me it cannot concern, who did not so much as know of it.

Mr. Wheat, having thus testified in open Parliament, before the Lords, was within a day or two called before the Committee; there re-examined in private, and very strictly, touching the time of my Agreement made: Then, not without some harshness, commanded not to depart the town, till he heard farther from them. This himself afterwards told me. Hereupon I resolved to call him again for farther Evidence, and, if I saw cause, to acquaint the lords with this usage. And I did call for it divers times after; but one delay or other was found, and I could never obtain it: and such a kind of calling my Witnesses to a private after-reckoning, is that which was never offered any man in parliament. And here Mr. Browne, in summing up my Charge, did me a great deal of right: for neither to the Lords, nor in the House of Commons, did he vouchsafe so much as to name this false, base, and unworthy Charge; of which my greatest enemies are ready to acquit me.

3. The third Particular was charged by one Mr. Delbridge; who says, He was oppressed at the Council-Table by the Lord Keeper Finch; that he was advised by Mr. Watkins to give my Secretary, Mr. Dell, money to get my hand to a Petition to the Lord Keeper, who, he said, would not oppose me: That Dell took of him 150*l*. and procured my hand to his Petition. I remember nothing of this business, and it lies wholly upon my Secretary; who being my Solicitor, is here present in Court, and desires he may answer the scandal.

There is no touch at all upon me, but that (he says) my Secretary got my hand to his Petition to the Lord Keeper. This Petition of his was either just or unjust: If just, I committed no fault in setting my hand to it; if unjust, he must confess himself a dishonest man, to offer to get my hand to bolster out his injustice: And yet if the injustice of it were varnished over with fair pretences, and so kept from my knowledge, the crime is still his own, and nothing mine, but an error at most. As for Mr. Watkins, he did me much wrong, if he sent any man to my house on such an errand.

Here my Secretary had leave to speak: denied the whole Business; and produced Mr. Hollis, with whom it was said the 150*l*. before-named should be deposited, who, to my remembrance, said he knew of no such thing.

4. The fourth Instance was a Bond for the payment of money as a Fine: The Bond found in sir Jo. Lamb's Chamber, with a Note upon the back of it, for 100*l*. received, and sir John, by my direction, was to call for the name. And here it was said, That I used the name of St. Paul's in an illegal way to get money; which

might well have been spared. For, as is aforesaid, I had a broad-seal, which gave me all Fines in the High Commission Court to the repairing of the West-end of St. Paul's, and with power to mitigate. And the Fines are the king's, and he may give them by law. The broad-seal is in the hands of Mr. Holford, who is thereby appointed Receiver of all such Fines; but is upon Record to be seen: And if it be doubted, I humbly desire a *Salvo* till the Record can be taken out, and shewed. But I presume these gentlemen have seen it. And Commutations for such crimes, as sir James Price's was, are according to law, and the ancient custom and practice in this kingdom, especially where men of quality are the offenders. And the power of commuting is as legal in that Court as any other: and if that be doubted, I humbly desire my Counsel may argue it.

5. The fifth Instance was a Charge concerning a Lease in Lancashire, held in three lives by sir Ralph Ashton. It is said by his son Mr. Ashton, the only Witness in the Cause, That I by power at Chester and York, and the High Commission here, being landlord in right of my Archbishoprick, did violently wrest this Lease of the Rectory of Whally in Lancashire out of his hands against law, and made him take a lease for years, and pay a great Fine besides, and other fines besides towards the repair of St. Paul's, and raised the rent 60*l*. Truly, my Lords, I am not any whit solicitous to answer this Charge. I challenged this Lease as void, and had great reason so to do, both for the invalidity of the lease itself, and the unworthiness of the tenant, both to me and my See. If in the preparations for trial at law, the judge at Chester (altogether unknown to me, and unlaboured by me) did say, as Mr. Ashton says he did, That for higher powers above he durst not, he was the more unworthy. And for York, I needed no power there; for I resolved to have him called into the High Commission here: which was after done.

This gentleman's son came to me about the Lease: I told him plainly, it was void in law, and that I meant to overthrow it: That if his father would surrender, I would renew it for years at a reasonable rate; but if he put me to expence in law, I would secure myself as well as legally I might. He replied, That Mr. Solicitor Littleton, (for so then he was) said, he durst not be against me. And there was good reason for it; he was my counsel, and feed in that particular. And what a poor evasion was this? Were there no other lawyers for him, because Mr. Solicitor was for me? The truth is, all that ever I did in this business, was not only with the knowledge, but by the advice of my Counsel, which were Mr. Solicitor Littleton and Mr. Herbert.

And at last this gentleman submitted himself and the cause; and if, as he says, Dr. Eden persuaded him to it, that nothing to me. As for the Fine, I referred the moderation of it wholly to my Counsel; they pitched upon

1,600*l.*, and gave such days of payment, as that a good part is yet unpaid; and this sum was little above one year's rent; for the parsonage is known to be well worth 1,300*l.* a year, if not more. And after the business was settled, my lord Wimbleton came to me, and gave me great thanks for preserving this gentleman, being, as he said, his kinsman, whom he confessed, it was in my power to ruin.

For the raising of the rent 60*l.*, it was to add means to the several curates to the Chapels of Ease: And I had no reason to suffer sir Ralph Ashton to go away with so much profit, and leave the curates both upon my conscience and my purse. And for his Fine to St. Paul's I gave him all the ease I could. But since his son will force it from me, he was accused of Adultery with divers women, and confessed all; And whether that Fine went, and by what authority, I have already shewed. And thus much more, my lords, at Mr. Bridgman's intreaty, I turned this Lease into lives again without Fine: But since I have this reward for it, I wish with all my heart I had not done it. For I am confident in such a case of Right, your lordships would have left me to the law, and more I would not have asked. And I think this, though intreated into it, was my greatest error in the business.

6. The last Instance was about the conversion of some Money to St. Paul's, out of administrations: By name, 2,000*l.* taken out of Wimark's estate, and 500*l.* out of Mr. Gray's. First, whatsoever was done in this kind, I have the broad seal to warrant it. And for Mr. Wimark's Estate, all was done according to law, and all care taken for his kindred. And if I had not stirred in the business, four men, all strangers to his kindred, would have made themselves, by a broken will, executors, and swept all away from the kindred. Secondly, for Mr. Gray's estate, after as odious an expression of it as could be made, and as void of truth as need be, the proceedings were confessed to be orderly and legal, and the charge deserted.

Then there was a sting at sir Charles Caesar's getting of the Mastership of the Rolls for money, and that I was his means for it: And so it was thence inferred, that I sold Places of Judicature, or helped to sell them. For this they produced a Paper under my hand: but when they had thrown all the dirt they could upon me, they say, they did only shew what probabilities they had for it, and what reason they had to lay it in the end of the Fourth Original Article; and so deserted it. And well they might; for I never had more hand in this business, than that when he came to me about it, I told him plainly as things then stood, that place was not like to go without more money, than I thought any wise man would give for it: Nor doth the Paper mentioned say any more, but that I informed the Lord Treasurer what had passed between us.

This Day ended, I was ordered to appear again, April 4, 1644, and received a Note from  
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the Committee, under serjeant Wild's hand, dated April 1. That they meant to proceed next upon the Fifth and Sixth Original Articles, and upon the Ninth Additional; which follow *in hæc verba*.

V. "He hath traitorously caused a Book of Canons to be composed and published, and those Canons to be put in execution, without any lawful warrant and authority in that behalf. In which pretended Canons many matters are contained contrary to the king's Prerogative, to the fundamental Laws and Statutes of this realm, to the Right of Parliament, to the Propriety and Liberty of the Subjects; and matters tending to Sedition, and of dangerous consequence; and to the establishment of a vast, unlawful, and presumptuous power in himself and his successors; Many of which Canons, by the practice of the said Archbishop, were surreptitiously passed in the late Convocation, without due consideration and debate; others by fear and compulsion were subscribed unto by the prelates and clerks there assembled which had never been voted and passed in the Convocation, as they ought to have been. And the said Archbishop hath contrived and endeavoured to assure and confirm the unlawful and exorbitant Power which he hath usurped and exercised over his majesty's subjects, by a wicked and ungodly Oath, in one of the said pretended Canons, enjoined to be taken by all the Clergy, and many of the laity of this kingdom."

VI. "He hath traitorously assumed to himself a Papal and Tyrannical Power, both in Ecclesiastical and Temporal Matters, over his majesty's subjects in this realm of England, and in other places, to the disinheritance of the crown, dishonour of his majesty, and derogation of his supreme authority in Ecclesiastical Matters. And the said Archbishop claims the king's Ecclesiastical Jurisdiction, as incident to his Episcopal and Archiepiscopal office in this kingdom; and doth deny the same to be derived from the crown of England: which he hath accordingly exercised, to the high contempt of his royal majesty, and to the destruction of divers of the king's liege people in their persons and estates."

#### The Ninth Additional Article.

IX. "That in and about the month of May 1641," [1640. Rush.] "presently after the dissolution of the last Parliament, the said Archbishop, for the ends and purposes aforesaid, caused a Synod or Convocation of the Clergy to be held for the several provinces of Canterbury and York; wherein were made and established, by his means and procurement, divers Canons and Constitutions Ecclesiastical, contrary to the laws of this realm, the rights and privileges of parliament, and liberty and property of the subject; tending also to sedition, and of dangerous consequence. And, amongst other things, the said Archbishop caused a most dangerous and illegal Oath to be therein made and contrived; the tenor whereof followeth in these Words: 'That I. A. B. do swear, that I

'do approve the Doctrine and Discipline or Government established in the Church of England, as containing all things necessary to Salvation; and that I will not endeavour, by myself or any other, directly or indirectly, to bring in any Popish Doctrine, contrary to that which is so established: Nor will I ever give my consent to alter the government of this Church by Archbishops, Bishops, Deans, and Archdeacons, &c. as it stands now established, and as by right it ought to stand; nor yet ever to subject it to the usurpations and Superstitions of the see of Rome. And all these things I do plainly and sincerely acknowledge and swear, according to the plain and common sense and understanding of the same words, without any equivocation or mental evasion, or secret reservation whatsoever. And this I do heartily, willingly and truly, upon the faith of a Christian. So help me God in Jesus Christ.' Which Oath the said Archbishop himself did take, and caused divers other Ministers of the Church to take the same, upon pain of suspension and deprivation of their livings, and other severe penalties: And did also cause Godfrey, then bishop of Gloucester, to be committed to prison for refusing to subscribe to the said Canons, and to take the said Oath; and afterward the said Bishop submitting himself to take the said Oath, he was set at liberty."

On Thursday April 4, 1644. I was again brought to the house, made a sufficient scorn and gazingstock to the people; and after I had waited some hours, was sent back, by reason of other business, unheard; but ordered to appear again on Monday April 8. Then I appeared again, and was used by the basest of the people as before. I did not appear any day but it cost me six or seven pounds: I grew into want. This made my Counsel and other friends to persuade me, the next time I had admittance to speak, to move the Lords again for some necessary allowance, notwithstanding my former Petition had been rejected. This advice I meant to have followed that day: But after some hours attendance I was sent back again unheard, and ordered to come again on Thursday April 11. This day I did not come to the House; a Warrant being sent to the Tower, which stayed me till Tuesday April 16.

*The Seventh Day of my Hearing.*

I. April 16. I appeared, and (as I remember) here Mr. Maynard left off (save that now and then he interposed, both in the Reply, and otherwise) and Mr. Nicolas, a man of another temper, undertook the managing of the Evidence. And the first Charge was concerning the late Canons, which he said, were against law to sit, the parliament being dissolved. No, my Lords, nothing against law that I know: For we were called to sit in Convocation by a different writ from that which called us as Bishops to the parliament. And we could not rise, till his majesty sent us another writ to discharge us: And this is well known to the

Judges, and the other lawyers here present. So we continued sitting, though the Parliament rose. Nor was this sitting continued by any advice or desire of mine: For I humbly desired a writ to dissolve us. But the best counsel then present, both of Judges, and other lawyers, assured the king we might legally sit. And here is a Copy attested under their hands.

Then he urged, out of my Diary, at May 29, 1640. That I acknowledged there were seventeen Canons made, which I did hope would be useful to the Church. It is true, my Lords, I did hope so. And had I not hoped it, I would never have passed my consent unto them. And when I writ this, there was nothing done or said against them. And if by any inadvertency, or human frailty, any thing erroneous or unfit have slipped into those Canons, I humbly beseech your lordships to remember, it is an Article of the Church of England, That General Councils may err (Art. 21.) and therefore this National Synod may mistake. And that since (if any error be) it is not wilfully, it may be rectified, and in charity passed by.

For the bishop of Gloucester's refusing to subscribe the Canons, and take the Oath; which is here said by the Counsel, but no Proof offered; the truth is this: He first pretended, to avoid his Subscription, that we could not sit, the Parliament risen. He was satisfied in this by the Judges hands. Then he pretended the Oath. But that which stuck in his stomach, was the Canon about suppressing of the Growth of Popery, (Can. 3.) For, coming over to me to Lambeth about that business, he told me, he would be torn with wild horses before he would subscribe that Canon. I gave him the best advice I could; but his carriage was such, when he came into the Convocation, that I was forced to charge him openly with it, and he as freely acknowledged it; as there is plentiful proof of Bishops and other Divines then present. And for his lordship's being after put to take the Oath, which was also urged, it was thus. I took myself bound to acquaint his majesty with this proceeding of my lord of Gloucester's, and did so. But all that was after done about his commitment first and his release after, when he had taken the Oath, was done openly at a full Council-Table, and his majesty present, and can no way be charged upon me, as my act: For it was my duty to let his majesty know it, to prevent farther danger then also discovered. But I am here to defend myself, not to accuse any man else.

Next he urged, That I had interlined the original copy of the Canons with my own hand. But this is clearly a mistake, if not a wilful one. For, perusing the place, I find the interlining is not in my hand, but my hand is to it, as, I humbly conceive, it was fit it should. And the words are in the ratification of the Canons, and therefore were necessarily to be in the original, howsoever slipped in the writing of them.

As for the oath so bitterly spoken of at the bar, and in the Articles; either it was made according to law, or else we were wholly misled

by precedent, as that such was never excepted against. For in the Canons made in king James's time, there was an Oath made against Simony; and an Oath for Church Wardens; and an Oath about Licences and Marriages; and an Oath for Judges in ecclesiastical courts: And some of these Oaths as dangerous as this is accounted to be. And all these established by no other authority than these late were. And yet neither those Canons, nor those Oaths, were ever declared illegal by any ensuing Parliament, nor the makers of them accused of any crime, much less of Treason. So that we had in this Synod unblamed precedent for what we did, as touching our power of doing it.

But, after all this, he said he would pass these things by, (that is, when he had made them as odious as he could) and would charge nothing upon me but the Votes of both Houses; namely, that these Canons contain matters contrary to the King's Prerogative, to the Fundamental Laws of the realm, to the Rights of Parliament, to the Propriety and Liberty of the Subject, and matters tending to Sedition, and of dangerous consequence. So these Votes of the honourable Houses made so long after, and therefore cannot well be an Evidence against the making of that which was done so long before, is the task lying now upon me to answer; which with your lordships honourable favour, I shall in all humbleness address myself unto.

Before these Words were well out of my mouth, Mr. Nicolas with much earnestness interposed, That he hoped their lordships would not endure that the "solemn Votes of both Houses" should be called into question by any Delinquent; and was sure the House of Commons would not endure it. Upon this the Lords presently gave their Resolution, that I might not speak to any thing that was declared by Votes; but was to answer only to the Fact, whether I made the Canons or no. To this, with leave humbly asked, I replied, That if I might not answer to the Votes, I must yield the Evidence, which I could not do; and that if I might answer, I must dispute the Votes, which their lordships resolved I should not do: That then I was in a perplexity, and must necessarily offend either way; and therefore humbly besought them to consider not my case only, but their own too. For I did conceive it would concern them in honour, as much as me in safety, That no Charge might be brought against me in that great Court, to which I should not be suffered to make answer: or else that they in honour would not judge me for that, to which my answer is not suffered to be given. With this, that all these Canons were made in open and full convocation, and are acts of that body, and cannot be ascribed to me, though President of that Synod, but are the joint acts of the whole body: So by me they were not made; which is my Answer.

And according to this I framed my Answer to Mr. Browne's Summary of my Charge, both hinting the Canons in general, and concerning the Instance before given about the

bishop of Gloucester.—But tho' I was not allowed there to make any farther Answer in defence of these Canons; nor can hold it fit to insert here so long an Answer as these Votes require; I humbly desire the courteous Reader, if he please, to look upon the Answer which I have made to a Speech of Mr. Nathaniel Fiennes, in the House of Commons, against these Canons. In which Answer I humbly conceive, I have satisfied whatsoever these Votes contain against them. Howsoever, I cannot but observe this in present. The words in the sixth Original Article are, as they are above cited; That the late Canons contain matters contrary to the king's Prerogative, the Laws, &c. But in the ninth Additional all the rest of the Exceptions are in against them, but these words about the king's Prerogative are quite left out. I would fain know, if I could, what is the reason of this omission in these added Articles: Is it for shame, because there was a purpose to charge me, as serjeant Wild did in his Speech the first day, That I laboured to advance the king's Prerogative above the Law? To advance it, and yet made contrary Canons against it: which is the way to destroy it. What pretty nonsense is this? Or is it because the framers of these Additionals (whom I conceive were some Committee, with the help of Mr. Prynne) thought the time was come, or coming, in which the king should have no more prerogative? Or if there be a third Reason let them give it themselves.

This was all concerning the Canons. Then followed the sixth Original Article about my assuming of Papal Power; where Mr. Browne, in summing up of his Charge, was pleased to say 'That no Pope claimed so much as I had done. But he was herein much mistaken: For never any pope claimed so little. For he that claimed least, claimed it in his own right, which was none; whereas I claimed nothing but in the king's right and by virtue of his concession: between which there is a vast latitude.' The first Proof upon this Article was read out of certain Letters sent unto me by the University of Oxford, I being then their Chancellor. Which great titles were urged to prove my assuming of Papal Power, because I did not check them in my Answers to those letters.

(1.) The first Title was *Sanctitas tua*, which Mr. Nicolas said, was the Pope's own title; but he is deceived: for the Title was commonly given to other bishops also clean through the Primitive Church, both Greek and Latin. He replied in great heat, as his manner it seems is, That it is Blasphemy to give that Title (*Sanctitas*) in the abstract, to any but God. And though by the course of the Court I might not answer then to the Reply, yet now I may: And must tell Mr. Nicolas, that it is a great presumption for him, a lawyer, and no studied divine, to charge Blasphemy upon all the Fathers of the Primitive Church. It is given to St. Augustine by Hila-

rius and Euodius, and in the abstract. (Apud Aug. Epist. 83, 93.) And which is the charge laid to me, St. Augustine never checks at, or finds fault with the Title, nor with them for writing it. And St. Augustine [Aug. Epist. 102.] himself gives that Title to Euodius, answering his Letters, which I was not to do to theirs: and after that to Quintianus. [Aug. Epist. 103.] Neither is any thing more common than this style among the Fathers, as as all learned men know. And it is commonly given by St. Gregory the Great [Greg. Eulogio Episcopo Alexandrino. Apud H. Spelman. in Concil. p. 80, et Episc. Arelatensi. Ib. d. p. 95.] to divers bishops; who being Pope himself, would not certainly have given away his own Title, had it been peculiar to him, to any other bishop. Nor would any of the Fathers have given this epithet to their brethren, had any savour of Blasphemy been about it. But there is a twofold Holiness, the one original, absolute and essential, and that it is in God only, and incommunicable to any creature: \* the other derivative and relative; and that is found in the creatures, both things and persons; or else God should have no Saints, no Holy Ones. For no man can be said to be *Sanctus*, Holy, but he who in some degree hath *Sanctitatem*, Holiness, residing in him. And this I answered at the present. But according to Mr. Nicolas his divinity, we shall learn in time to deny the Immortality of the Soul: For Immortality, in the abstract, is applied to God only, 1 Tim. 6, 16. "Who only hath Immortality." Therefore, if it may not in an under and a qualified sense, by participation, be applied to the Creature, the soul of man cannot be immortal.

(2.) The second Title in "*Spiritu Sancto effusissime plenus*." My Lords, I had sent them many hundred Manuscripts, and in many languages. Upon this, in allusion to the Gifts of Tongues, (and it was about Pentecost too that I sent them) the luxuriant pen of the University orator ran upon these phrases; which I could neither foresee before they were written, nor remedy after; And finding fault, could not remedy that which was past. Besides, all these Letters were in answer to mine; I was to answer none of theirs: that might have made me work enough, had I wanted any.

(3.) The third style is "*Summus Pontifex*." But this was in my lord of London's Letters; and he must answer, if any thing be amiss. But *Pontifex*, and *Summus* too, is no unusual style to and of the chief prelate in any nation.

(4.) The fourth style is "*Archangelus*, et ne

\* The Managers against the Archbishop in another place pretend, that this Title was never given to any English bishop at least: But herein they are much mistaken; for it was often given to them. To produce but one instance: Pope Leo III. gave this title to Ethelard Archbishop of Canterbury, and that in a Letter wrote to Kenulphus king of Mercia. Ang. Sacr. par. 1, p. 460. H. W.

quid nimis." Yes, sure, the meanest of these titles is *multum nimis*, far too much, applied to my person and unworthiness: Yet a great sign it is that I deserved very well of that University in the place I then bare, or else they would never have bestowed such titles upon me. And if they did offend in giving such an unworthy man such high language, why are not they called in question for their own fault?

(5.) The last which I remember, is, "*Quo rector non stat Regula*," &c. And this is no more than an absolute Hyperbole; a high one I confess; yet as high are found in all Rhetorical Authors: and what should make that Blasphemy in an University Orator, which is every where common, and not only allowed, but commendable, I know not: Especially since the rule of the interpretation of them is as well known as the figure. Where the Words are not to be understood in their proper and literal sense, but as St. Augustine speaks, when that which is spoken, *longe est amplius*, is far larger than that which is signified by it. [St. Aug. 16, Civ. Dei, c. 21.] And if I had assumed any of these Titles to myself, which I am, and ever was far from doing; yet it is one thing to assume Papal Title, and another to assume Papal Power, (which is the thing charged) though I thank God I did neither. If I have here omitted any Title, it is mere forgetfulness; for one part or other of the Answers given will reach it, whatever it be. And, as I told Mr. Browne, when he charged this on me, Dr. Strowd, the University Orator, who writ those Letters, and gave those Titles, was called up before a Committee of this Parliament, examined about them, acquitted, and dismissed.

(6.) These Titles from the Letters being past, he quoted another, which he called a blasphemous Speech too, out of my Book against Fisher; [§ 25, p. 171.] where, he said, I approved of Anselme, an enemy to the crown: and took on me to be Patriarch of this other world. Let any man look into that place of my Book, and he shall find that I make use of that Passage only to prove that the pope could not be appended unto out of England, according to their own doctrine: which I hope is no Blasphemy. And for St. Anselme, howsoever he was swayed with the Corruptions of his time, yet was he in other things worthy the testimony which the Authors by me cited give him. And if any man be angry that the Archbishop of Canterbury is called the Patriarch of this other World, he may be pleased to remember that St. Jerom gives St. Augustine, who was Bishop of Hippo, and no Archbishop, a greater Title than that: for he writes, *Beatissimo Papæ Augustino*, more than once and again, as appears in his Epistles to St. Augustine. [St. Hieron. apud Aug. Epist. 11, 13, 14, 17, 18, &c.]

(7.) To these sir Nath. Brent's testimony is produced; who says, That he over-heard me say to another "That I would not so easily

quit the Plenitude of my Power," or to that effect. He confesses he was coming in, and finding me speaking with another, made stay, and stood afar off, and knows not of what I spake, (for so he said) but over-heard the words. I beseech your lordships observe this Witness: He confesseth he knows not of what I spake, and yet comes here upon his oath, to testify of Plenitude of Power in relation to my assuming Papal-Power. If he meant not this, his testimony is nothing; for Plenitude of Power may extend to many other things; and I might justly say, (if I said it) "That I would not easily part with the Plenitude of my Power," in relation to other bishops of my Province, who by law have not so full power as I have. But if he did mean this, then his testimony is worse than nothing: nothing, in regard he confesses he knows not of what I was speaking; and worse than nothing, that not knowing, he would give such a testimony upon oath.

II. The next Charge of this day was, That I went about to exempt the Clergy from the Civil Magistrate.

1. The first Witness is Mr. *Pincen*. He says he heard me say at the High-Commission, "That the Clergy were now debased; that heretofore it was otherwise, and I hope to see it so again." Truly, my Lords, if I did say this (which is more than I can call to memory) I spake truth: They were debased; and I did hope to see it otherwise: for the debasing of the Clergy will make their Office and their Doctrine base, as well as their persons. But here is not a word of freeing them from laws or the temporal magistrate. It was replied, He did mention the Civil magistrate. 'If he did,' he mentions no time; by which I might be enabled to make counter-proof. He is single. 'They are Words, and if within the statute, then triable by it within six months. And I desire this grave gentleman to consider his oath: for if I spake of any such exemption, I must speak against my conscience and judgment; which, I humbly thank God, I used not to do. Nor is it altogether impossible for the civil magistrate sometimes to oppress poor clergymen. But a little will be thought too much of this. And therefore to Mr. *Browne's* summary Charge, I gave the former Answer, That I spake of exemption from oppression, not from law.'

2. The second Witness was alderman *Railton*, about the carrying up of the Sword in the Church when he was Lord Mayor. He says, I once sent him word about it, but knows not by whom; and after heard no more of it, but refers himself to Mr. *Marsh*. He says, There was an Order of the Council-Table, May 3, 1633, concerning the submitting of the Sword in time and place of Divine Service. If an Order of Council, then was it no act of mine, as I have often pleaded, and must as often as it comes. He says farther, That I spake these Words, or to this effect, "That the Church

had been low for these 100 years; but I hoped it would flourish again in another hundred." But here is no one word of Exemption from Civil Magistracy. And I hope your lordships will take witnesses as they speak, not as men shall infer and descant upon them. And then, my Lords, under favour, 'I see no harm in the words.' Only I shall recall my hope: For if I had then any hope to see it flourish in another hundred years, it is that which I cannot hope for now. He says, there was a reference to the Counsel on both sides; and that under that reference the business died. And if it died then, what makes it here before the resurrection? Yea, but says Mr. *Nicolas*, Here is agitation about the submitting of the Sword, which is the emblem of Temporal power. But neither to foreign nor home power, but only to God; and that in the place, and at the performance of his holy worship; At which time and place Christian kings submit themselves, and therefore cannot stand upon the emblems of their power. Nor would the Lords of the Council have made either Order or Reference, had there been any thing of danger, or against law, in this kind of submitting. Mr. *York* was produced as another Witness, but said just the same with *Marsh*; and so the same Answer served him.

III. Then followed a Charge about the Charter of York to be renewed; and that I did labour to have the Archbishop of York, his Chancellor, and some of the Residentiaries, named in it to be Justices of Peace within the city.

To prove this, Alderman *Hoyle* is produced; who says, There was an Order of the Council about this; but cannot say that I procured it. So far then this Proof reaches not me. For the Bishop, his Chancellor, and some of the Residentiaries, to be Justices of Peace within the city; if I were of this opinion, (as then advised) I am sure there is no Treason in it, and I believe no crime. And, under your lordship's favour, I could not but think it would have made much peace, and done much good in all the cities of England where Cathedrals are. Lastly, he says, There was a debauched man committed about breach of the Sabbath; and being casually smothered, I should say, "They deserved to be hanged that killed him." Concerning this man: he lost his life, that is confessed. His debauchery, what it was, is not proved. And were he never so disorderly, I am sure he was not without legal trial to be shut up into a house, and smothered; that is against both law and conscience: And the officers then in being had reason to smother the business as much as they could: and, it may be, deserved somewhat, if not that which this Alderman says I said, to his best remembrance: For so, and with no more certainty he expressed it. This I am sure I said, That if the Bishop, or any of the church, had been then in their charter, the poor man's life had not been lost.

IV. The fourth charge was just of the same nature, concerning the Charge of Shrewsbury, For this there were produced two Witnesses. Mr. Lee and Mr. Mackworth. But they make up but one between them; For Mr. Lee could say nothing but what he acknowledges he heard from Mr. Mackworth. And Mr. Mackworth says first, That the school-master's business was referred to other lords and myself. That is no crime; And, to my knowledge, that has been a troublesome business for these 30 years. He says, I caused that there should go a *Quo Warranto* against the town. This is but as Mr. Owen informed him; so no proof. Beside, it is no crime, being a Referree, if I gave legal reason for it. Nor is it any crime that the Bishop and his Chancellor should be justices within the town, as is aforesaid in the case of York: considering especially, that then many clergymen bare that office in divers counties of England. He adds, that an old alderman gave 50*l.* to St. Paul's. But out of what consideration, I know not, nor doth he speak. And if every alderman in the town would have given me as much to that use, I would have taken it, and thanked them for it. Then he says, There was an Order from all the Lords Referrees, for settling all things about their Charter. So, by his own confession, the whole business was transacted publicly, and by persons of great honour, and nothing charged upon my particular. If Mr. Owen sent me in a butt of sack, and after put it upon the Town account, (for so he also says) Mr. Owen did ill in both; but I knew of neither. And this the Counsel, in their Reply, said they urged not in that kind. Lastly, The Charter itself was read to both points, of the Bishop and his chancellor being justices of peace within the town, and the not bearing up of the sword: To both which I have answered already. And I hope your lordships cannot think his majesty would have passed such a Charter, or that his learned counsel durst have put it to him, had this thing been such a crime as it is here made.

V. The next Charge was out of my Diary, at March 5, 1635. The words are; "William Juxon, lord bishop of London, made Lord High Treasurer of England. No churchman had it since Henry 7's time. I pray God bless him, to carry it so, that the Church may have honour, and the king and the state service and contentment by it. And now if the church will not hold up themselves, under God, I can do no more." I can see no treason in this, nor crime neither. And though that which I did to help on this business, was very little, yet aim I had none in it, but the service of the king, and the good of the church: And am confident it would have been both, had not such troublesome times followed, as did.

VI. Then they instanced in the Case of Mr. Newcomin. But that Cause being handled before, they did only refer the lords to their Notes: And so did I to my former Answers.

VII. Then followed the Case of Thora and

Middleton, which were fined in the High-Commission, about some clergy-mens business, Thorn being constable. The Witnesses in this case are three.

1. The first is *Hansford*, (if I took his name right:) And for the Censure of these men, he confesses, it was in and by the High-Commission: and so no act of mine, (as I have often pleaded.) But then he says, that I there spake these words, "That no man of their rank should meddle with men in holy orders." First, he is in this part of the Charge single, and neither of the other witnesses comes in to him. Secondly, I humbly desire the Proceedings of the High Commission may be seen, (which are taken out of our hands.) For so far as I can remember any thing of this cause, the minister, Mr. Lewis, had hard measure. And perhaps thereupon I might say, That men of their rank should not in such sort meddle with men in Holy Orders. But to tax the proceedings of a violent busy constable, was not to exempt the clergy from civil magistracy.

Upon this, he falls just upon the same Words, and says, That I uttered them about their offering to turn out a corrector from the Printing-house. This corrector was a minister, and a well-deserving man. The trust of the press was referred to the High-Commission court. And I hope your lordships will not think, that not to suffer the printers to turn out a deserving man at their pleasure, is to exempt the clergy from the civil magistrate. The business, my Lords, was this: This Corrector was principally entertained for the Latin and Greek Press especially, which I had then not without great pains and some cost erected. They were desirous to keep only one for the English, and him at the cheapest. Among them their negligence was such, as that there were found above 1,000 faults in two Editions of the Bible and Common-Prayer-Book. And one which caused this search was, that in Exod. 20, where they had shamefully printed, "Thou shalt commit adultery." For this the Masters of the Printing-House were called into the High-Commission, and censured, as they well deserved it. As for this corrector, whom they would have heaved out, they never did so much as complain of him to any that had power over the press, till this fell upon themselves for so gross an abuse. Nor did they after this proceed against him, to make him appear faulty; and till that were done, we could not punish. And for this business of the Press, he is single too. And I have told your lordships that which is a known truth. 'And Hunsford being bit in his credit, and purse, and friends, by that Censure, for so gross an abuse of the Church and Religion, labours to fasten his fangs upon me in this way.'

2. The second Witness is Mr. *Bland*. But all that he says is, That there was once a dismission of this Cause, out of the Court, and that though I disliked it, yet I gave way to it, because all parties were agreed. And no word of Proof, that I was any cause of bringing it

back into the court again. What is my fault in this?

3. The third Witness was *Thorn* in his own Cause: and it is plain, by his own words, that this cause was depending in court before my time. And I believe, were the Records of the Court here, Mr. Lewis would not be found so great an offender as Mr. *Thorn* would make him. This I am sure of, both the High Commission and myself have been quick enough against all ministers which have been proved to be debauched in their life and conversation. And he says nothing against me, but that I sided with his adversaries; which is easy to say against any Judge that delivers his sentence against any man. But neither of these come home to *Hunsford*.

VIII. The next Charge is in the Case of one Mr. *Toumkins*, about the taxing of a minister in a case of Robbery, and repayment by the country.

To this Mr. *Newdigate* is produced: who says, as he remembers, that I should speak these words, "That Ministers were free from such Taxes, and I hoped to see the times in which they might be free again." First, this gentleman is single. Secondly, He speaks not positively, but "as he remembers." Thirdly, This Tax, I do humbly conceive, is not by law to be laid upon any minister. For no man is subject to this Tax, but they which are to keep watch and ward; which ministers in that kind are not bound unto. And this I learned of the Lord Keeper *Coventry* at the Council-Table. So I might well then hope to see ministers free from all such taxes, by the right understanding and due execution of our own laws, without assuming any Papal power.

IX. The last instance of this day was the bringing of sir *Rich. Samuel* into the High-Commission, for doing his office as justice of the peace upon some clergymen. First, For this, this gentleman is single, and in his own case. Secondly, himself confesses, that his bringing into the High-Commission was long after the fact. Therefore in all probability not for that; nor doth he say that I caused his bringing in. He says farther, That one Article for which he was called into the Commission, was, that he was an enemy to the Clergy. But he doth not say, that I preferred these Articles against him: nor doth he tell, or can I remember, what the other Articles were, which with this may be bad enough to merit what was there laid against him. And whatsoever was done, appears by his own Narration to be the act of the High-Commission, or the Council-Table, and so not chargeable upon me alone. And whereas he says, I blamed him much at the Council-Table; let him tell why, and then I will give him a farther Answer; And sure if I did blame him, I had just cause so to do. Lastly, he says, I did use the word "base" to him, when he came to me. Sure I cannot believe I did; it was not my language to meaner men. If it did slip from me, it was in relation to his entury to

the clergy, not to his person or quality. 'And I conceive it is no gentle part, for a man of place and power in his country, to oppress poor clergymen which neighbour about him. In which kind this gentleman, *pessime audicbat*, heard extremely ill.'

This Day thus ended, I was ordered to appear again on Monday, April 22. I came, and my former Answers having taken off the edge of many men, (for so I was told by good hands) the scorns put upon me at my landing, and elsewhere, were somewhat abated, though when it was at best I suffered enough. After I had attended the pleasure of the House some hours, I was remitted without hearing, and commanded to attend again upon Thursday, April 25, but sent back again then also, and ordered to appear on Tuesday, April 30. And when I came, I was sent away once more unheard: no consideration had of myself, or the great charge which this frequent coming put me to. I was then ordered to appear again on Saturday, May 4. Then I was heard again: and the day proceeded as follows.

#### *My Eighth Day of Hearing.*

Saturday, May 4, 1644. To raise up envy against me, Mr. *Nicolas* falls first to repeating the Titles which were given me in letters from Oxford; to which I gave answer the day before. From thence he fell again upon the former Charge, my endeavour to exempt the Clergy from the Civil Power. And very loud he was, and full of sour language upon me. To this general, I answered with another more true; That I never did attempt to bring the Temporal Power under the Clergy, nor to free the Clergy from being under it: But I do freely confess, I did labour all I could to preserve poor clergymen from some laymens oppression, which lay heavy on them. And *de Vi Luica* hath been an old, and a great, and too just a complaint. And this I took to be my duty, doing it without wrong to any man; as sincerely I did to the best of my knowledge: And assuring myself, that God did not raise me to that place of eminency, to sit still, see his service neglected, and his ministers discountenanced; nay, sometimes little better than trampled on. And my standing thus to the Clergy, and their just Grievances, is not the least cause of my present condition. In which my case (though not my abilities) is somewhat like *Cicero's*. For having now for many years defended the public state of the Church, and the private of many church-men, as he had done many citizens; when he by prevailing factions came into danger himself, *ejus Salutem defendit nemo*, [*Pat. c. l. 2. Hist.*] no man took care to defend him that had defended so many: which yet I speak not to impute any thing to men of my own calling, who, I presume, would have lent me their just defence, to their power, had not the same storm which drove against my life, driven them into corners to preserve themselves.'

I. The first Instance was in Mr. *Shervil's*

Case;\* in which Mr. John Steevens tells what I said to the counsel pleading in the Star-Chamber, which was, That they should take care not to cause the laws of the Church and the kingdom to clash one against another. I see, my lords, nothing that I spake was let fall, nor can I remember every speech that passed from me; he may be happy that can. But if I did speak these words, I know no crime in them: it was a good Caveat to the counsel, for ought I know. For surely the laws of church and state in England would agree well enough together, if some did not set them at odds. And if I did farther say to the then Lord Keeper, (as it is charged) "That some Clergymen had sat as high as he, and might again:" which I do not believe I said: yet if I did, it is a known truth. For the lord Coventry, then Lord Keeper, did immediately succeed the lord bishop of Lincoln in that office. But though I dare say, I said not thus to the Lord Keeper, whose moderation gave me no cause to be so round with him, yet to the counsel at the bar, I remember well, upon just occasion given, that I spake to this effect; 'That they would forbear too much depressing of the Clergy, either in their reputation or maintenance, in regard it was not impossible that their profession, now as high as ours once was, may fall to be as low as ours now is; 'if the professors set themselves 'against the church, as some of late are known 'to have done: And that the sinking of the 'Church would be found the ready way to it.'

II. The second Instance was about calling some Justices of the Peace into the High-Commission, about a sessions kept at Tewksbury.

1. The first Witness for this (for three were produced) was Mr. Jo. Steevens. He says, 'That the isle where the sessions were kept, was joined to the Church. If it were not now a part of the church, yet doubtless being within the church-yard, it was consecrated ground. He says, That sessions were kept there heretofore. And I say, the more often the worse. He says, That I procured the calling of them into the High-Commission. But he proves no one of these things, but by the report of sir Rob. Cook of Gloucestershire, a party in this Cause. He says again, That they had the bishop's licence to keep the sessions there. But the Proof of this also is no more than that sir Rob. Cook told him so: so all this hitherto is hearsay. Then he says, the 88th Canon of the Church of England was urged in the Commission-Court, which seems to give leave in the close of the Canon, that temporal courts or leets may be kept in church or church-yard. First, that clause in the end of the Canon, is referred to the ringing of bells, not to the profanations mentioned in the former part of that Canon. Nor is it probable, the minister and church-wardens should have power to give such leave, when no Canon gives such power to the bishop himself. And were it so, here is no

Proof offered, that the minister and church-wardens did give leave: And suppose some Temporal Courts might upon urgent occasion be kept in the church with leave, yet that is no warrant for sessions, where there may be trial for blood. He says farther, That the civilians quoted an old Canon of the Pope's and that that prevailed against the Canon of our church, and sentence given against them. All those Canons which the civilians urged, are law in England, where nothing is contrary to the law of God, or the law of the laud, or the king's prerogative royal: and to keep off profanation from churches, is none of these. Besides, were all this true which is urged, the act was the High-Commission's not mine. Nor is there any thing in it that looks towards Treason. [25 H. 8. c. 19. § ult.]

2. The second Witness is Mr. *Edward Steevens*. He confesses that the Sentence was given by the High-commission, and that I had but my single Vote in it. And for the place itself, he says, the place where the sessions were kept, was separated from the Isle of the Church by a wall breast-high; which is an evident proof that it was formerly a part of that Church, and continued yet under the same roof.

3. The third Witness is Mr. *Talboyes*, (who, it seems, will not be out of any thing which may seem to hurt me.) He says, the parish held it no part of the church. Why are not some of them examined, but this man's report from them admitted? They thought no harm, he says, and got a license. But why did they get a license, if their own conscience did not prompt them that something was irregular in that business? He says, he was informed the sessions had been twice kept there before. And I say, under your lordships favour, the oftner the worse. But why is not his Informer produced, that there might be proof, and not hearsay? Upon this, I said, (so he concludes) That I would make a precedent against keeping it any more. If I did say so, the cause deserved it; men in this age growing so bold with Churches, as if profanation of them were no fault at all.

III. The third Instance concerning sir Tho. Dacres, a justice of peace in Middlesex, and his warrant for punishing some disorderly drinking. The Witnesses the two church-wardens, Colliar and Wilson; two plain men, but of great memories: for this business was when I was bishop of London, and yet they agree in every circumstance, in every word, though so many years since. Well, what say they? It seems Dr. Duck, then my Chancellor, had cited these churchwardens into my court? therefore either there was, or at least in his judgment there seemed to be somewhat done in that business against the jurisdiction of the Church. They say then, that the court ended, Dr. Duck brought them to me. And what then? Here is a cause, by their own confession, depending in the Ecclesiastical Court; Dr. Duck

\* See vol. 3. p. 519.

in the king's quarters, where I cannot fetch him to testify; no means left me to know what the Proceedings were; and I have good cause to think, that were all the merits of the cause open before your lordships, you would say, sir Tho. Dacres did not all according to law. But what is the heart of this Charge? It is, say they, That I commanded Dr. Duck to prosecute them. And what fault was in this? For if it were just, why should not Dr. Duck go on with his prosecution? If Dr. Duck and I were both mistaken in the particular, it was easy getting a Prohibition. Yea, but they say I said, "If this must be so, sir Thomas Dacres shall be bishop of London, and I will be sir Thomas Dacres." For ought I see in the weight of it, this whole Charge was but to bring in this speech. And truly, my lords, my old decayed memory is not such, as that I can recalc a speech 13 or 14 years since. But if I did say it, I presume it is not High-Treason for a bishop of London to say so much of sir Tho. Dacres. 'Mr. Browne, in the summing up the Charge against me, laid the weight of the charge in this, That these church-wardens were prosecuted for executing the warrant of a justice of peace upon an ale-house keeper, for tipping on the Sabbath-day, contrary to the statutes Jac. 7. et Car. 3. To which I answered, That those statutes did concern the ale-house keepers only, nor were the church-wardens called in question for that; but because being church-officers, and a churchman tipping there, they did not complain of that to the chancellor of the diocess. Mr. Browne replied, There was no clergyman there. I am glad I was so mistaken. But that excuseth not the church-wardens, who being church-officers, should have been as ready to inform the bishop, as to obey the justice of peace.'

IV. The fourth Instance was about Marriages in the Tower, which I opposed against law. The witness sir William Balfore, then lieutenant of the Tower. He says, that I did oppose those Marriages: and so say I. But I did it for the subject of England's sake: for, many of their sons and daughters were there undone. Nor Banes, nor licence, nor any means of fore-knowledge to prevent it. Was this ill? He says, That when he spake with me about it, I desired him to speak with his majesty about it, because it was the king's house. What could I do with more moderation? He confesses he did so, and that he moved the king that the cause might be heard at the Council-Table, not at the High-Commission. To this his majesty inclined, and I opposed nothing, so the general abuse might be rectified. Then he says, Mr. Attorney Noye said at the Council-Table, it was the king's free chapel, and that no pope in those times offered to inhibit there. First, if Mr. Attorney did so say, he must have leave to speak freely in the king's case. Secondly, (as I humbly conceive) the Chapel for ordinary use of prisoners and inha-

bitants of the Tower, where these disorderly Marriages are made, is not that which is called the king's free chapel; but another, in the side of the White Tower by the king's lodgings. Thirdly, if it be, yet I have herein not offended; for I did all that was done by the king's leave, not by any assumption of papal power. Then he tells the lords, That in a discourse of mine with him at Greenwich, about this business, I let fall an oath. I am sorry for it, if I did, but that is no Treason. 'And I know whom the Deponent thinks to please by this interposition: for to the matter it belongs not.' In conclusion, he says truly, That the king committed the business to some lords and judges, that so an end might be put to it; and in the mean time ordered, that till it were ended, there should be no more Marriages in the Tower. How this business ended, I know not. It began, I am sure, by authority of his majesty's grant of the High-Commission to question and punish all such abuses, 'tam in locis exemptis, quam non exemptis.' And his majesty having graciously taken this care for the indemnity of the subject, I troubled myself no more with it; my aim being not to cut off any privileges of that place, but only to prevent the abuses of that lawless custom. And if *cui bono* be a considerable circumstance, as it uses to be in all such businesses, then it may be thought on too, that this gentleman the lieutenant had a considerable share for his part out of the fee of every marriage. Which I believe was as dear to him as the privilege.'

V. The next Instance is broke out of the Tower, and got as far as Oxford. The Witness, alderman Nixon. He says, the mayor, and the watch set by him, were disturbed by the proctors of the University, and a constable imprisoned. The night-walk, and the keeping of the watch, is the antient, known, and constant privilege of the University for some hundred of years; and so the watch set by the town (purposely to pick a quarrel) was not according to law. He adds, That when the right hon. the earl of Berkshire would have referred the business to the king's counsel learned, I refused, and said, I would maintain it by my own power, as chancellor. If I did say this (which I neither remember nor believe) I might better refuse lawyers, (not the law, but lawyers) than they a sworn judge of their own nomination, which they did.

The Case was briefly this. There were some five or six particulars which had, for divers years, bred much trouble and disagreement between the University and City; of which, to my best remembrance, this about the Night-Watch, and another about Felons Goods, were two of the chief. The University complained to me. I was so far from going any by-way, that I was resolved upon a Trial at Westminster-Hall, thinking, as I after found, that nothing but a legal trial would set those two bodies at quiet. The townsmen liked not this;

came some of the chief of them to London; prevailed with their honourable Steward my lord the earl of Berkshire, to come to me to Lambeth, and, by his lordship, offered to have all ended without so great a charge at law, by reference to any of the Judges. I said I had no mind to wrong the town, or put them to charge, but thought they would fly off from all awards; and therefore stuck to have a legal trial. After this, some of the chief Aldermen came to me with my lord, and offered me, That if the University would do the like, they would go down and bring it up under the mayor and aldermen's hands, that they would stand to such end as Judge Jones, who rode that circuit, should, upon hearing, make. They did so, and brought the Paper so subscribed; and therefore I think alderman Nixon's hand is to it as well as the rest: upon this I gave way; the University accepted; the Judge heard and settled. And now when they saw my troubles threatening me, they brake all, whistled up their Recorder to come and complain at the Council-Table, his majesty present. And I remember well, I told his lordship, (then making the aforesaid motion to refer to the king's learned counsel) that his lordship well knew what had passed; and that being so used as I had been by the townsmen, I would trouble myself with no more references to lawyers, or to that effect. And I appeal to the honour of my lord, whether this be not a true relation.

VI. The sixth Instance concerns the putting of one Mr. Grant out of his right. He says, but he is single, and in his own cause, That Mr. Bridges was presented to an Impropriation; and that suing for tythe, he, the said Grant, got a Prohibition, and Mr. Bridges a reference to the then Lord Keeper Coventry and myself; That we referred them to the law, and that there Grant was non-suited, and so outed of his right. 1. In all this there is nothing said to be done by me alone. 2. The Lord Keeper, who well understood the law, thought it fittest to refer them to the law; and so we did. If he were there non-suited first, and outed after, it was the law that put him out, not we. 'Yet your lordships see here was a Prohibition granted a case, which the law itself after rejected.'

VII. Then follows the Instance, That I had a purpose to abolish all Impropriations. The first Proof alleged was a Passage out of bishop Mountague's Book, p. 210, That Tythes were due by divine right, and then no Impropriations might stand. And Mr. Prynne witnessed very carefully, That this Book was found in my own study, and given me by bishop Mountague. And what of this? Doth any bishop print a book, and not give the Archbishop one of them? Or must I answer for every proposition that is in every book that is in my study, or that any author gives me? And if bishop Mountague be of opinion that Tythes are due by divine right, what is that to me? Your lordships know many men are of different opinions in

that difficulty; and I am confident you will not determine the controversy by an act of parliament. They were nibbling at my Diary in this, to shew that it was one of my projects to fetch in Impropriations; but it was not fit for their purpose: for it is expressed, That if I lived to see the Repair of St. Paul's near an end, I would move his majesty for the like grant for the buying in of Impropriations. And to buy them from the owners, is neither against law, nor against any thing else that is good; nor is it any Usurpation of Papal Power.\*

2. The second Proof was my procuring from the king such Impropriations in Ireland, as

\* This opinion, "That Titles are due to the Clergy of Divine Right," he here cautiously avoids to admit or to deny. What were his sentiments on this matter, appears in "Gibson's View of the ancient and present State of the Churches of Door, &c." from which, p. 28, the following passage is extracted:

"Furthermore, his lordship" (John viscount Scudamore) "had the happiness of having an intimate friendship with bishop Laud, whom he consulted upon the validity of his ancestor's purchase of the Rectory of Door; and the conveyances of other Tythes, by other means, so far as his conscience was concerned. To him he stated his case in all its circumstances, set forth what his titles were, and what pleas might be brought in defence or favour of them; as is evident from a Letter of the Bishop's, written with his own hand. So much of which as relates to my purpose, I shall here transcribe.

"I. Your first Quære is, Whether the retaining of Impropriations to your own use, being sold to your ancestors by king Henry 8, with the reservation of annual rent to his heirs and successors, be in 'you a sin?

"To this, you know, that all Impropriations, except a little glebe, consist of Tythes. 'So your doubt will be wholly upon this question, Whether Tythes be due to the priest, and him only, *Jure Divino*, by Divine Law, or by Ecclesiastical Constitution. Neither my time, nor my leisure, will give me leave to dispute this question. But thus lies your doubt upon it. If Tythes be due by divine law, and that law of God be indispensable either by church or state, as if it be moral law it is, then Impropriations being Tythes, no doubt can be made but you sin the sin of Sacrilege by retaining them to your own use.

"Yea, but your ancestors bought them.—True. But it was of him that had no right to sell, and they had as little to buy. For if one man be so daring as to sell God's Altar, yet his daring is no warrant for him to sell, or another to buy it.

"Yea, but Henry 8. reserved an annual pension to his heirs, which is still paid. Be it so. Yet still if Tythes be due by the moral law of God, he did but sell one part of the sin, and reserve the other. Loth he was, it

were in the king's power, to the Church of Ireland. 'Which Mr. Nicolas, in his gentle language, calls robbing of the crown.' My Lords, the case was this. The Lord Primate of Armagh writ unto me, how ill conditioned the state of that Church was for want of means; and besought me that I would move his majesty to give the Impropriations there, which yet remained in the crown, for the main-

tenance and encouragement of able ministers to live among the people, and instruct them; assuring me, they were daily one by one begged away by private men, to the great prejudice both of crown and church. And the truth of this, the Lord Primate is now in this kingdom, and will witness. I acquainted the king's great officers, the Lord Treasurer, and the Chancellor of the Exchequer, with it. And after long de-

'seems, to part with it all; and fin he would 'his heirs should inherit some little of it. The 'less the better. And I cannot but pray for 'his successor's sake, that no canker be in that 'little. Yet you see his name is gone.

" 'Yea, but it was made a lay-fee by an act 'of parliament.—Well, if any man think an 'act of parliament is an absolution from sin 'against the moral law of God, he is much out 'of his way, and it will be a poor plea at ano- 'ther bar.

" 'Yea, but the Pope and the Church of 'Rome had impropriated Tythes to abbeyes, and 'monasteries, and churches, and colleges, from 'the priest that served, before Hen. 8. took 'and sold them.—Tis true; and let the Church 'of Rome answer that sin. Their fault cannot 'excuse another; and yet their sin was this 'much the less, because the Tythes went to 'that which they then thought was the true 'service of God. But Hen. 8. put them into 'lay-hands, and lay-use, and what use most 'lay-men put them to, I forbear to speak.

" 'So I think this is clear: If Tythes be due '*Jure Divino auctoritate*, which is the opinion of 'many great divines, you cannot hold Impro- 'priations to your own use, without sin.

" 'If Tythes be due to the priest, only by 'Judicial or Ceremonial Law, as some are of 'opinion, at least for the quota, i. e. the pre- 'cise tenth part, yet if they hold, that less than 'the tenth (as the eleventh or twelfth part, &c.) 'may not be paid, the matter will be much 'about one. For if the divine moral law hath 'not defined the quota at the tenth just, yet 'if it hath settled that nothing under the tenth 'is sufficient, then it leaves a liberty for any 'to give more, but warrants none to give less, 'or diminish that, or hold it when it is dimi- 'nished.

" 'If Tythes be due only by ecclesiastical 'and civil laws, or either of them, then the 'church and the state may alter the law of 'Tythes upon just and good grounds. And 'that law, once altered (as it was here in Eng- 'land upon the lay-side, but whether the 'church consented, or how far, I cannot tell) 'it may then be thought lawful for men to hold 'such Tythes and Impropriations as they have; 'buy more, or sell them, or do what they will 'upon a fair commerce.

" 'So, for your first doubt, a great part of it 'will lie upon your own conscience. For if in 'your conscience you be persuaded that Tythes 'be due to the priest for his service, by an in- 'dispensable moral law of God; you cannot 'hold them to your own use, nor sell them to

'another without sin, and that sin against your 'conscience.

" 'But if your conscience be persuaded, 'that Tythes are due only by church or state 'law, then you are either truly or erroneously 'so persuaded. If truly, then the church and 'the state having first by another law expressed 'themselves, (as here the state did, and in- 'volved the church, but, with what consent 'of her's, I know not); then, supposing the 'church's lawful consent, you may safely either 'keep or sell, and both without sin; because, 'according to such law as is not sinful, and 'without any contradiction in your own con- 'science. If you be erroneously so persuaded, 'then you should nor keep nor sell, be- 'cause you should have a better guide than an 'erring conscience.

" 'Yet this you gain by the persuasion (if it 'be a persuasion indeed, and not assumed), 'that though you sin by following an erring 'conscience, yet you sin not against your con- 'science, and so commit no sinful sin, whether 'you keep Impropriations, or sell them. Now, 'what you are persuaded in conscience, con- 'cerning the right which the priesthood have 'to the Tythe, that you must ask yourself, and 'not me.

" 'II. Your second Quere, Whether the 'selling these Impropriations free you from 'sin, though the money received for them 'be otherwise employed than upon the 'Church?

" 'To this, there is answer enough given in 'the former; for it rests upon the same foun- 'dation altogether. For if Tythes be due by 'divine right, that is indispensable, then, as 'you have no right to hold them, so have you 'none to sell them, and bestow the money to 'other uses than the church; nor can the sale 'free you from sin, because you sell that which 'by divine law is God's, not yours.

" 'And the reason you give, that perhaps 'you may sell though you cannot keep, be- 'cause your ancestors bought them, is of no 'force; for you know it is *carcat emptor*; it is 'the buyer should consider what he buys, and 'of whom: and if they bought what they should 'not, you sell from the church what you should 'not; and your conscience in this as in the 'former, must be a great part of your own di- 'rection, though I cannot say it is fit you should 'follow it alone.

" 'How you stand persuaded in conscience 'for the right of Tythe I know not. How I 'myself stand, I can easily tell: and were the

liberation, the king was pleased, at my humble suit, to grant them in the way which I proposed: which was, That when they came into the clergy's hands, they should pay all the rents respectively to the king, and some consideration for the several renewings. And the truth of this appears in the deeds: so here was no robbery of the crown. For the king had all his set rents reserved to a penny, and consideration for his casualties beside. And, my lords, the increase of Popery is complained of in Ireland: Is there a better way to hinder this growth, than to place an able Clergy among the inhabitants? Can an able clergy be had without means? Is any means fitter than Impropropriations restored? My lords, I did this, as holding it the best means to keep down Popery, and to advance the Protestant religion. And I wish with all my heart I had been able to do it sooner, before so many Impropropriations were gotten from the crown into private hands.

VIII. Next I was charged with another project in my Diary, which was to settle some fixed *Commendams* upon all the smaller bishop-

'case mine, if I could not give my Impropropriations back, I would beg God's mercy that I might be able to give; and when God had taken off my difficulty, and made me able, I would as really give; and if I could not give all, yet some I would; and charge it upon my heir at my death to give either the rest, or such a proportion as I thought fit; and then bind him to charge his heir for the remainder; that you and your posterity may restore that to the Church, which your ancestors consented to buy and take from it.

"I pray God bless you in the tenderness of your conscience; and for this, if in any particular I fall short of your expectation, if you cannot lay it upon the shortness of the time, spare not to lay it upon my weakness; so withal you deny me not your prayers for increase of God's strength in me. In great haste, I leave you to the grace of God, and rest your very loving friend,

'Westminster, 'GUIL. Batho. & Wellen.'  
'Jan. 18, 1626.'"

"Milord Clarendon disoit ici, que la premiere sennence des mouvemens d'Angleterre, qui n'ont que trop éclaté sous le regne de Charles L. venoit de ce que ce prince avoit témoigné, peu après qu'il fut monté sur le trone de son père, qu'il vouloit retirer les biens ecclésiastiques des mains de la noblesse avec qui Henry 8, auteur du schism, les avoit partagez." Vigneul-Marville, i. 149. Warton's edit. of Pope, i. 131, note. "This fact, which Clarendon used to mention when he retired to Rouen, and which the author gives as a circumstance not noticed in history," Mr. Laing says, "must relate to the revocation of tithes, &c. in Scotland; the only occasion on which Charles ever manifested his design to recover the ecclesiastical revenues from the nobles." *Quære tamen*.

rics. For this, I said, their own means were too small to live and keep any hospitality, little exceeding 4 or 500*l.* a year. I considered that the *Commendams* taken at large and far distant, caused a great dislike and murmur among many men; that they were in some cases *matteria odiosa*, and justly complained of. And hereupon I thought it a good church-work to settle some temporal lease, or some benefice, *sine cura*, upon the lesser bishoprics, but nothing but such as was in their own right and patronage; that so no other man's patronage might receive prejudice by the bishops' *Commendam*: which was not the least rock of offence, against which *Commendams* endangered themselves. And that this was my intent and endeavour, is expressed in my Diary; and I cannot be sorry for it. ❧

IX. Then I was accused for setting old Popish Canons above the laws. Mr. Burton is the sole witness. He says, It was in a case about a pew, in which those Canons did weigh down an act of parliament. 'I did never think till now Mr. Burton would have made any canons 'pew-fellows' with an act of parliament.' But seriously, should not Mr. Burton's testimony for this have been produced at the second Instance of this day? For in the end of that is just such another charge; and the answer there given will satisfy this, and that by act of parliament too. (25 Hen. 8, c. 19, § ult.)

X. After this came a Charge with a great outcry; That since my coming to be Archbishop, I had renewed the High Commission, and put in many illegal and exorbitant clauses, which were not in the former. Both the commissions were produced. Upon this, I humbly desired that the docket might be read, by which their lordships might see all those particulars which were added in the new Commission, and to be able to judge how fit or unfit they were to be added. The Docket was read; and there was no particular found, but such as highly deserved punishment, and were of ecclesiastical cognizance: as blasphemy, schism, and two or three more of like nature.

1. In this Charge, the first exorbitant Clause they insisted on, as added to the new Commission, was the power given "in locis exemptis, et non exemptis;" as if it were thereby intended to destroy all privileges. No, not to destroy any privilege, but not to suffer enormous sins to have any privilege. Besides, this Clause hath ever been in all commissions that ever were granted. And I then shewed it to the Lords in the old Commission there present, p. 28, 32, 35, 42. 'Nay more, this proceeding "tam in locis exemptis quam non exemptis," is allowed to the governors of the Church, in the exercise of their Ecclesiastical Jurisdiction, by act of parliament in queen Elizabeth's time [1 Eliz. c. 2,]; which would never have been allowed, had it then been thought such a dangerous business, as it is now made 'against me.'

2. The second Clause was Power to cen-

sure, by Fine and Imprisonment. This also I shewed in the old Commission, fol. 37, and is, I conceive, in plain pursuance of the act of parliament upon which the High-Commission is grounded. For the king says there, fol. 13, (and so it is in the new) That he grants this power by virtue of his Supreme Authority, and prerogative royal,\* and of the said act. Nay farther, it is added in this latter Commission, "And by our Authority Ecclesiastical," which is not expressed in the former. And sure I would never have caused Authority Ecclesiastical to be added, had I any Plot, as it is urged, either to exalt the Clergy above the Laity, or to usurp Papal Power; which all men know is far enough from ascribing Ecclesiastical Authority to the king. And as for Fine and Imprisonment, if that power be not according to law, why was it first admitted, and after continued in all former Commissions?

3. The third Clause was the *Non Obstante*, which he said was against all law, and of such a boundless extent, as was never found in Commission or other Grant in England. And he here desired the Lords that he might read it, which he did, with great assurance of a triumph. But after all this noise which Mr. Nicolas had made, I shewed the same *Non Obstante* in the Old Commission; fol. 62, word for word; which I humbly desired might be read and compared; It was so. The Lords looked strangely upon it; Mr. Nicolas was so startled, that he had not patience to stay till his Reply, (which he saw impossible to be made) but interrupted me, and had the face to say in that honourable assembly, That I need not stand upon that: for he did but name that, without much regarding it. And yet at the giving of the Charge, he insisted principally upon that Clause, and in higher and louder terms than are before expressed. Had such an advantage been found against me, I should have been accounted extremely negligent, if I compared not the Commissions together: or extremely impudent, if I did.

4. The fourth Exception was, That by this Commission I took greater Power than ever any Court had, because both Temporal and Ecclesiastical. 1. Whatsoever Power the High-Commission had, was not taken by them, till given by his majesty, and that according to use and statute, (for ought hath been yet declared.) 2. They have not power of life or limb, therefore not so great power as other courts have. 3. They may have more various power in some respects, but that cannot make it greater. 'As for the expression in which it is said, 'I took this power;' that is pnt most unworthy and unjustly too, to derive the envy as 'much as he could upon my person only.' For he could not hold from comparing me to Pope Boniface 8, and saying, That I took on me the power of both swords. But this was only *ad faciendum populum*. For he knows

well enough, that to take both the swords, as the Pope takes them, is to challenge them originally as due to him and his place: Not to take both, as under the prince, and given by his authority; and so not I alone, but all the Commissioners take theirs.

5. Fifthly, to prove that this vast Commission, as it was called, was put in execution, Mr. Burton is produced. He says, That when he was called into the High-Commission, he appealed to the king, and pleaded his Appeal; and that thereupon I and the bishop of London writ to the king to have him submit to the court. He confesses he was dismissed upon his appeal, till his majesty's pleasure was farther known. And it was our duty, considering what a breach this would make upon the jurisdiction of the court, to inform his majesty of it; and we did so. The king declared that he should submit to the court, as is confessed by himself. Then he says, Because he would not submit to the court, he was censured notwithstanding his appeal. And he well deserved it, that would not be ruled by his majesty, to whom he had appealed. And the Commission had power to do what they did. Besides, himself confesses, all this was done by the High-Commission, not by me. Nor doth he urge any threat, promise, or solicitation of mine, any way to particularize the act upon me: And farther, he is single, and in his own cause.

XI. Then followed the last Charge of this day, which was the Patent granted for the Fines in the High-Commission, for finishing the West end of St. Paul's, cried out upon as illegal, and extorted from the king, and such as took all power from him for the space of ten years, for which time it was granted. This is the fourth time that St. Paul's is struck at. My Lords, let it come as often as it will, my project and endeavour in that Work was honest and honourable to both church and kingdom of England. No man in all this search and pursuit hath been able to charge me with the turning of any one penny or pennyworth to other use than was limited to me. I took a great deal of care and pains about the work, and cannot repent of any thing I did in that service, but of human frailty. And whereas it is said, this Patent was extorted from his majesty; as there is no proof offered for it, so is there no truth in it. For his majesty's piety was so forward, that nothing needed to be extorted from him. Thus went I on, *bona fide*, and took the prime direction of the kingdom for drawing the Patent, the Lord Keeper Coventry, Mr. Noy, and sir Henry Martin. And therefore if any thing be found against law in it, it cannot be imputed to me, who took all the care I could to have it beyond exception. And I marvel what security any man shall have, that adventures upon any great and public work in this kingdom, if such counsel cannot be trusted for drawing up of his Warrant. 'And whereas it was said, This Patent 'for the 10 years apace took away both justice 'and mercy from the king; that is nothing so:

\* The words of the statute are, 'By virtue of this Act.'

‘For whatever the words be, to enable me the better for that work, yet these being inseparable from him, may be used by him, notwithstanding this or any other Patent. And if these be inseparable, (as it is granted they are) no inseparable thing can be taken away; or if it be taken, it is void in law, and the king is where he was in the exercise of his right, both for justice and mercy. And so I answered Mr. Browne’s summary Charge against me. And as for that which he farther argued concerning St. Gregory’s Church, Mr. Inigo Jones and others were trusted with that whole business, and were censured for it in this present parliament. In all which Examination no part of the Charge fell on me.’ And because here are so many things urged about Free-Chapels, Lay-Fee, Patents, Appeals, and the like, I humbly desire a *salvo* may be entered for me; and that my counsel may be heard for matter of law, if any doubt stick with your lordships.

This Day ended, I did, according to my resolution formerly taken, move the Lords for means, considering my charge in coming, and how oft I had attended, and was not heard. Their lordships considered of my motion, and sent me out word I should petition them. I did humbly petition their lordships May 6. My Petition was presently sent down to the House of Commons, that so by both houses it might be recommended to the Committee for Sequestrations. But upon a Speech in the house of commons, that it was fit to see what would become of me, before they troubled themselves with thinking of means for me, my Petition was cast aside.

At my parting from the house, I was ordered to appear again on Thursday, May 9, but then fairly put off by an Order (sent to the Lieutenant of the Tower) to Monday, May 13. So the scorn and charge of that day was escaped. But then I appeared according to this Order, and had scorn plenty, for what I escaped the day before: And, after long attendance, was dismissed again unheard; and had Thursday, May 16, assigned unto me. That Day held, and proceeded thus.

#### *The Ninth Day of my Hearing.*

1. May 16, 1644. The first Charge of this day was about a Reversion of the Town-Clerk’s Office of Shrewsbury to one Mr. Lee, which he desired might be inserted into the new Charter.

1. Mr. Lee is single here, and in his own case. 2. It appears by his own contention, out of the mouth of Mr. Barnard, that there was a reference of this business to those lords to whom Shrewsbury Charter was referred; For he says, That Mr. Barnard told him his business was stayed, and he thought by me; but did not know whether the lord keeper’s hand were not in it. So it seems by himself, this was done by the lords referees, and not by me. 3. I did not then think, nor do now, that the reversion of a place, to be sold for 300*l*. (as he confesses that was) was fit to be put into a Town-Charter.

But yet neither I, nor the Lord-Keeper, did any thing in that stop, but what we acquainted his majesty with, and had his approbation of. And whereas he says, That he acquainted the right hon. the earl of Dorset with the stay that was made, and that thereupon his lordship should say, ‘Have we two kings?’ I cannot believe that honourable lord would so say, unless he were much abused by Mr. Lee’s information, both in regard of his love to me, and in regard it could not proceed from a man of so great a judgment as that lord is. For I beseech your lordships consider, may not lords, to whom a business is referred, give his majesty good reason to alter his mind in some particulars which they have debated, and not he? And may not this be done without any one of them taking on him to be a second king?

II. The second Charge was laid on me by sir Arthur Haselrig, (which should have come in the day before, as Mr. Nicolas said, but that sir Arthur was absent in the necessary service of the state.) Sir Arthur, being single and in his own case, says, That sir John Lambe presented a blind parson to a living of his. If sir John did that, or any unworthy thing else, *etatem habet*, let him answer for himself. He says farther, That this living is an Impropriation, and so a lay-fee by law; and that when he told me so much, I made him this Answer, ‘That if I lived, no man should name or stand upon his Lay-Fee.’ I conceive, my Lords, here is a great mistake in the main: For I have been credibly informed, and do believe, that benefice is presentative, and so no lay-fee. And then there is no fault to present unto it, so the clerk be fit. Secondly, There is a main mistake in my Words, which I remember well, and where it was that I spake them. My words, under this gentleman’s favour, and your lordships, were these, and no other; ‘That I had good information that the Benefice was presentative; and that if I lived, I hoped to order it so, that no man should make a presentative benefice a lay-fee; there were too many of them already.’ Thirdly, If I did speak the words as they are charged, if they come within that statute of six months, so often mentioned, to that I refer myself: ‘whatsoever the bird at this time of the year sings,’ as Mr. Nicolas was pleased to put it upon me. And truly, my Lords, I could easily return all his bitterness upon himself, could it beth my person, my present condition, or my calling.

III. The third Charge was about the refusing of a Pardon, which Mrs. Bastwick said she produced in the High-Commission Court some nine or ten years since: And she adds, That I should then say, it should not serve his turn. But this was no rejecting of the Pardon; for she confesses I said I would move his majesty about it. So that if it did not serve his turn, it was from the king himself, upon motion made, and reason given, not from any power assumed by the High-Commission or myself. And the act, whatever it were, was the act of the whole court not mine. As for the Words, (if mine) I

gave the same Answer as before, notwithstanding Mr. Nicolas his bird.

IV. The fourth Charge was, That whereas there was a Proclamation to be printed about the Pacification with the Scots, it was suddenly stopped : and an Order after for burning of the Pacification. 1. Mr. Hunscoth is single in this Charge. 2. Whatsoever was done in this, was by Order of Council : And himself names an Order which could not come from me. 3. He charges me with nothing but that I sent word the Proclamation was to be stayed ; which, if I did, I did it by command. However, this concerns the Scottish business, and therefore to the Act of Oblivion I refer myself. ' With this, that I see by this testimony, Mr. Hunscoth (for I took his name uncertainly) hath not yet forgotten, ' Thou shalt commit Adultery ; ' so desirous he is to catch me at the press.'

V. The first Charge was about a Benefice in Northamptonshire, in the case of Mr. Fautrye and Mr. Johnson, and Dr. Beal's succeeding them. In which broken business, (for such it was) 1. That business was all along acted by the High-Commission, not by me. 2. That though in the case of Simony the benefice be lost, *ipso facto*, yet that must be proved before the incumbent can be thrust up, and another instituted, else churchmen were in a miserable condition for their livelihood. Excommunication is in many cases void in law, *ipso facto* ; and yet, *ante litem*, *Sententiam*, till Sentence be orderly pronounced against it, no man shall be subjected to those fearful consequences which follow upon it. ' And upon this ground ' of natural equity, that in the Statute concerning the Uniformity of Common-Prayer ' proceeds : ' Where it is said, " That a party once convicted for depraving the Common-Prayer-Book, and relapsing into the same crime, shall be deprived of all his spiritual promotions, *ipso facto*." (Eliz. c. 2.) But how? without any legal proceedings? No, God forbid ! For the Words preceding immediately in the Statute, are, " That he must be first legally convicted of that criminal relapse ; " and then follows *ipso facto*, and not before. And therefore the super-institution, before the Simony tried and judged, was illegal ; beside the great danger to the parishioners, while two persons, and their several friends, are scrambling for the Tythes. Secondly, Fautrye was not censured for the original cause of Simony, but for an Intruder, and Colluder too with James, to abuse the king's grant of the benefice. Thirdly, it seems Fautrye had no better opinion of his own cause : for he went to his benefice in Jersey, and set not his title on foot again till after seven years ; and that, I think, was when he heard that Mr. Johnson was a pretender to it. And his bond upon the Sentence was to make a final peace. For the Prohibition, which he says was refused, I have answered that before, in the charge about Prohibitions. Besides, it appears by law, (13

Edw. 1.) that as Prohibitions may be granted in some cases, so in some cases they may be refused. For Dr. Beal, there is not the least shew of Proof offered, that I brought him in, if to do so be a crime.

Thus far Mr. Fautrye went. As for Mr. Johnson's title, he says, That the lords ordered it for him, and declared that we in the High-Commission could put no man out of his freehold. Where first, if your lordships have ordered this business, I must crave to know how far I shall have leave to speak to it : for if there be any errors charged upon the Sentence given in the High-Commission, if they may not be spoken to they cannot be satisfied. This I am sure of, the commission hath power to deprive : for the Statute (1 Eliz. c. 1. § 8.) gives it power " to use all Ecclesiastical and Spiritual Censures ; " of which deprivation is known to be one : and that power is expressly given to deprive some offenders of all their spiritual promotions, by the following statute. (1 Eliz. c. 2.) Therefore I think it follows necessarily, either that we have power over freehold in that case, or else that a benefice is not a freehold. But I have no reason, howsoever, to speak any thing (were I left never so free) against your lordships' Order, which very honourably left Dr. Beal to the law ; as it is confessed by Johnson.

Besides these two in their own cause, one Mr. Jenkins is produced ; but to what end I know not, unless it be to bespatter Dr. Beal. He says, That seven years since Dr. Beal was Vice-chancellor of Cambridge ; that in his Sermon then he inveighed bitterly against the Power of Parliaments, and named some censuratory speeches of his, both concerning their persons and proceedings. Surely, if Dr. Beal did as is testified, he was much to blame. But what is this to me ? If it be said I did not punish him : how could I punish that I knew not ? And I profess I heard not of it till now at bar. If it be said I did prefer him ; that I do absolutely deny. And neither Mr. Jenkins, nor any other, offers the least proof that I knew the one, or did the other.

VI. The sixth Charge was concerning the Statutes of the University of Oxford ; in which, and the Cathedrals of the new erection, Mr. Nicolas says I took on me to be an universal law-giver. Many such offices he bestows upon me, which God knows, and I believe he too, that I never affected. No, my lords, the great necessities of that University called upon me for it : their statutes lay in a miserable confused heap. When any difficulty arose, they knew not where to look for remedy or direction. Then into the Convocation-House, and make a new statute ; and that many times proved contrary to an old one concerning the same business : men in the mean time sworn to both, which could not possibly be kept together. By this means perjury was in a manner unavoidable : and themselves confess in their register, (which is now in court) that till this

was done, they did in a sort swear, that they might be forsworn. [Jurati ante ut Perjuri evaderent fol. 69.]

Besides, my Lords, I did not abolish any the old Books, in which the Statutes lay so confused, some in one book, and some in another; but left them all intirely in the University, in case in after-times any use might be made of them. Nor did I with them, as some ancient Philosophers are said to have done with the Works of some that went before them; that is, make them away, to advance their own honour the more, as if without any help of former pains, they had done all themselves: holding it honour more than enough for me, that God had so highly blessed me in this work, as to finish and settle those Statutes, which the greatest men in their times, cardinal Wolsey first, and after him cardinal Pool, assayed, but left as imperfect as they found them. Neither did I any thing in this work but by the consent of the University, and according to an Act (and a delegacy thereby appointed) of their own convocation.

Mr. Nicolas says, There is a Rasure in one of the acts, and supplied in other ink. I told your lordships then presently, (being loth to lie never so little under such an imputation) that if there be any such, it must be charged upon the University, not upon me, for those Records were never in my hands? nor is it so much as said they were. And since I withdrew to make my Answer, I have viewed the Record, and an alteration or addition there is; and it is a known hand. It is Dr. Dappa's hand, now lord bishop of Salisbury, and then Vice-Chancellor; who I doubt not but is able to give a good account of what he did therein, and why. And for aught appears, it is nothing but the amendment of some slip, which their ignorant register French had failed in, and the Vice-Chancellor thought it safest to mend with his own hand. And for my own part, if ever I did any thing worth thanks from the public in all my life, I did it in this work, for that University. And I wish with all my heart the times were so open, as that I might have the University's testimony both of me and it. 'Since I cannot, a great lord, present in the House when this Charge was laid against me, supplied in part their absence: for he was over-heard to say, to another lord, "I think my Lord Archbishop hath done no good work in all his life, but these men will object it as a crime against him before they have done."'

With this Charge about the Statutes it was left fall, (and I well know why, 'It was to heat a noble person then present,') That I procured myself to be chosen Chancellor of that University. If I had so done, it might have been a great ambition in me, but surely no treason. But, my Lords, I have proof great store, might I be enabled to fetch it from Oxford, that I was so far from endeavouring to procure this honour to myself, as that I laboured by my letters for another. And it is well known, that when they had chosen me, I went instantly to

his majesty, so soon as ever I heard it, and humbly besought him that I might refuse it, as well foreseeing the envy that would follow me for it; and it did plentifully every way. But this for some reasons: his majesty would not suffer me to do.

Then were objected against me divers particulars contained in those Statutes: As, 1. The making of new Oaths. The Charters of the University are not new, and they gave power to make statutes for themselves, and they have ever been upon oath. 2. The next illegality is, That men are tied to obey the Proctors in singing the Litany. This is antient, and in use long before ever I came to the University; and it is according to the Liturgy of the church of England, established by law. 3. The Statute of Bannition from the University. But there is nothing more antient in the University-Statutes than this. 4. That nothing should be proposed in Convocation, but what was consented unto among the Heads of Colleges first; which was said to be against the liberty of the Students. The young Masters of Arts, void of experience, were grown so tumultuous, that no peace could be kept in the University, till my worthy predecessor, the right hon. William earl of Pembroke, settled this Order among them: As he did also, upon the same grounds, settle the present way of the choice of their Proctors. In both which I did but follow and confirm, for so much as lay in me, the good and peaceable grounds which he had laid in those two businesses. 'And Mr. Browne, who, in the summing up of my Charge, urged this against me, mainly mistook in two things. The one was, 'That he said this Inhibition of Proposals was in Congregations: whereas it was only in Convocations, where more weighty businesses are handled. The other was, That this stay of Proposals was made till I might be first acquainted with them. No; it was but till the Heads of Colleges had met, and considered of them, for avoiding tumultuary proceedings. 'And when my honourable predecessor made that Order, it was highly commended every where; And is it now degenerated into a crime, because it is made up into a statute?' 5. That some things are referred to arbitrary Penalties. And that some things are so referred, is usual in that University, and many Colleges have a particular Statute for it: Nor is this any more power than ordinary school-masters have, which have not a statute-law for every punishment they use in schools. And in divers things the old known statute is, That the Vice-Chancellor shall proceed *grasso modo*, that is, without the regular forms of law, for the more speedy ending of differences among the scholars. 6. That the Statute [Tit. 15. § 12.] made by me against Conventicles is very strict: But for these that Statute is express *de illicitis Conventiculis*: and I hope such as are unlawful may be both forbid and punished. Besides, it is according to the Charter of Richard 2d to that University. 7. The seventh was the Power of Discomoning. But this also hath

ever been in power, and in usage in that University, as is commonly known to all Oxford men: And no longer since than king James his time, bishop King, then Vice-Chancellor, discommoded three or four Townsmen together. 8. That Students were bound to go to prison upon the Vice-Chancellor's or Proctor's command. This also was ancient, and long before my coming to the University. And your lordships may be sure the delegacy, appointed by themselves, would not have admitted it, had it not been ancient and usual. 9. and lastly, [Tit. 9. § 2.] About the stay of granting Graces, unless there were testimony from the bishop of the diocese. This was for no Graces, but of such as live not resident in the University, and so they could not judge of their manners and conversation. And for their Conformity to the Church of England, none, as I conceive, can be a fitter witness than the Bishop of the diocese in which they resided. And, my Lords, for all these thus drawn up by some of their own body, I obtained of his majesty his broad-seal for confirmation; and therefore no one thing in them is by any assumption of papal power, as it is urged; but by the king's power only. 'As for the Statutes themselves, there was scarce one urged against me, but it was either a statute or a prescription of that University long before I was born into the world, and could not therefore be of my new making. And this was my Answer to Mr. Browne in the house of commons. And such Bannition, Discommoding, and the like, are well known to be.'

VII. Then followed the seventh Charge, About the Statutes of some Cathedral Churches. First, my lords, for this, I did it by letters-patents from the king, bearing date Mar. 31 decimo Caroli, and is extant upon Record. And all that was done, was *per juris remedia*, and so nothing intended against law, nor done that I know. They had extreme need of Statutes; for all lay loose for want of Confirmation, and men did what they listed: and I could not but observe it; for I was dean of Gloucester, where I found it so. In seeking to remedy this, I had nothing but my labour for my pains; and now this accusation to boot. The particulars urged are, 1. That I had ordered that nothing should be done in these statutes, *me inconsulto*. And I had great reason for it. For since I was principally trusted in that work by his majesty, the king, if any complaint were made, would expect the account from me. And how could I give it, if other men might do all, and I not be so much as consulted before they passed?

2. That I made a Statute against letting Leases into three lives. But first, my lords, the statute which makes it lawful to let leases for 21 years, or three lives, (13 Eliz. c. 10, § penult.) hath this limitation in it, "That they shall not let for many more years than are limited by the said colleges or churches." Now in Winchester church, and some other,

the old local statute is most plain, that they shall let no Lease into lives. Let the Dean and Prebendaries answer their own acts, and their consciences, as they can. And in those Statutes which I did not find pregnant to that purpose, I did not make the statute absolute, but left them free to renew all such leases as were anciently in lives before. And this gave me leave to say to your lordships without offence: If but a few more leases be granted into lives, no bishop nor Cathedral church shall be able to subsist. And this is considerable also, That, as the Statute of the Church yet stands, the laity have the benefit, by the leases which they hold, of more than five parts of all the bishops, deans and chapters, and college Revenues in England. 'And shall it be yet an eye-sore to serve themselves with the rest of their own? This evidence Mr. Browne, whose part it was to sum up the Evidence against me at the end of the Charge, wholly omitted: for what cause, he best knows.'

VIII. The next Charge was about my Injunctions in my visitation of Winton and Sarum, for the taking down of some houses. But they were such as were upon consecrated ground, and ought not to have been built there; and yet with caution sufficient to preserve the lessees from over-much damage. For it appears *apud Acta*, that they were not to be pulled down till their several leases were expired. And that they were houses not built long since, but by them; and that all this was to be done, to the end that the church might suffer no damage by them: and that this demolition was to be made *juxta decreta regni*, according to the statutes of the kingdom. Therefore nothing enjoined contrary to law: or if any thing were, the Injunction took not place, by the very tenor of that which was charged. 'Mr. Browne omitted this Charge also, though he hung heavily upon the like at St. Paul's; though there was satisfaction given, and not here.'

IX. The ninth Charge was my intended Visitation of both the universities, Oxford and Cambridge. For my Troubles began then to be foreseen by me, and I visited them not. 1. This was urged as a thing directly against law. But this I conceive cannot be, so long as it was with the king's knowledge, and by his warrant. 2. Because all power of the king's Visitations was saved in the warrant, and that with consent of all parts. 3. Because nothing in this was surreptitiously gotten from the king, all being done at a most full Council-Table, and great counsel at law heard on both sides. 4. Because it did there appear, that three of my predecessors did actually visit the Universities, and that *Jure Ecclesie sue Metropolitice*. 5. No immunity pleaded, why the Archbishop should not visit; for the instance against cardinal Pool is nothing. For he attempted to visit, not only by the right of his see, but by his power legatine from the Pope; whereas the University Charters are express, that such

power of Visitation cannot be granted *per Bullas Papales*. And yet now it is charged against me, that I challenged this by Papal Power.\* 'Mr. Browne wholly neglected this Charge also; which unking such a shew, I think he would not have done, had he found it well grounded.'

X. The tenth Charge was my Visitation of Merton College in Oxford. The witness, sir Nathaniel Brent, the warden of the college, and principally concerned in that business. He said, 1. That no Visitation held so long. But if he consult his own office, he may find one much longer, held and continued at All-Souls College by my worthy predecessor archbishop Whitgift. 2. He urged that I should say, I would be warden for seven years. If I did so say, there was much need I should make it good. 3. That one Mr. Rich. Nevil, fellow of that college, lay abroad in an ale-house; that a wench was got with child in that house, and he accused of it; and that this was complained of to me; and sir Nath. Brent accused for conspiring with the ale-wife against Nevil. I am not here to accuse the one, or to defend the other. But the case is this: This cause between them was public, and came to hearing in the Vice-Chancellor's court, witnesses examined, Mr. Nevil acquitted, and the ale-wife punished. In all this I had no hand. Then in my Visitation it was again complained of to me. I liked not the business; but forbore to do any thing in it, because it had been legally censured upon the place. 'This part of the Charge Mr. Browne urged against me in the house of commons, and I gave it the same Answer.' Lastly, When I sat to hear the main business of that College, sir Nath. Brent was beholden to me that he continued Warden. For in archbishop Warham's time, a predecessor of his was expelled for less than was proved against him. And I found that true which one of my visitors had formerly told me, namely, That sir Nath. Brent had so carried himself in that college, as that if he were guilty of the like, he would lay his key under the door, and be gone, rather than come to answer it. Yet I did not think fit to proceed so rigidly. But while I was going to open some of the Particulars against him, Mr. Nicolas cut me off, and told the Lords, this was to scandalize their Witnesses. So I forbore.

XI. Then followed the last Charge of this day, concerning a Book of Dr. Bastwick's, for which he was censured in the High Commission.

\* The Archbishop had collected many Papers, Decrees, and Precedents, to assert his privilege of visiting the Universities, in right of his See, about the year 1635. Which being seized on by Prynne, among his other Papers at Lambeth, were by him, after the Archbishop's death, published in his own name, with this title, "The Plea of the University of Oxford refuted," &c. London, 1617, eight sheets in 4to. H. W.

The witnesses in this Charge were three. Mr. Burton, a mortal enemy of mine, and so he hath shewed himself: Mrs. Bastwick, a woman and a wife, and well tutored: for she had a Paper and all written which she had to say; though I saw it not till it was too late. And Mr. Hunscoot, a man that comes in to serve all turns against me, since the Sentence passed against the Printers for "Thou shalt commit Adultery."

In the particulars of this Charge, it is first said, That this Book was written *contra episcopos latiales*. But how cunningly soever this was pretended, it is more than manifest, it was purposely written and divulged against the Bishops and Church of England. 2. That I said that Christian Bishops were before Christian kings: So Burton and Mrs. Bastwick. And with due reverence to all kingly authority be it spoken, who can doubt but that there were many Christian Bishops, before any king was Christian? 3. Mr. Burton says, That I applied those words in the Psalm, "Whom thou may'st make princes in all lands," to the Bishops. For this, if I did err in it, many of the Fathers of the Church misled me, who interpret that place so: And if I be mistaken, it is no Treason. But I shall ever follow their comments before Mr. Burton's. 4. Mrs. Bastwick says that I then said, 'No Bishop, and no King.' If I did say so, I learned it of a wise and experienced Author, king James, who spake it out and plainly in the Conference at Hampton-Court\*. And I hope it cannot be Treason in me to repeat it. 5. Mrs. Bastwick complained, That I committed her husband close prisoner. Not I, but the High-Commission; not close prisoner to his Chamber, but to the prison, not to go abroad with his keeper; which is all the close imprisonment which I ever knew that court use. Lastly, The pinch of this Charge is, That I said "I received my jurisdiction from God, and from Christ;" contrary to an act of parliament, (37 H. 8, c. 17.) which says, bishops derive their jurisdiction from the king. This is witnessed by all three, and that Dr. Bastwick read the statute. That statute speaks plainly of jurisdiction *in foro contentioso*, and places of Judicature, and no other. And all this forinsecud jurisdiction, I and all bishops in England derive from the crown. But my order, my calling, my jurisdiction *in foro conscientie*, that is from God, and from Christ, and by divine and apostolical right. And of this jurisdiction it was that I then spake (if I named jurisdiction at all, and not my calling in general.) For I then sat in the High-Commission, and did exercise the former jurisdiction under the broad seal, and could not be so simple to deny the power by which I then sat. Beside, the Canons of the Church of England, to which I have subscribed, are plain for it. Nay further, the use and exercise of my jurisdiction *in foro conscientie*,

\* See the said Conference, No. 76, vol. 2, p. 77.

may not be but by the leave and power of the king within his dominions. And if bishops and presbyters be all one order (as these men contend for), then bi-hops must be *Jure Divino*, for so they maintain that presbyters are. This part of the Charge Mr. Browne pressed in his report to the house of commons; and when I gave this same Answer, he in his reply said nothing but the same over and over again, save that he said, I fled to he knew not what inward calling and jurisdiction: which point, as I expressed it, if he understood not, he should not have undertaken to judge me.

The 16th of May I had an Order from the Lords, for free access of four of my servants to me.

On Friday, May 17, I received a Note from the Committee, that they intended to proceed upon part of the sixth Original Article remaining, and upon the seventh; which seventh Article follows in *hæc verba*:

VII. "That he hath traitorously endeavoured to alter and subvert God's true Religion by law established in this realm, and instead thereof to set up Popish Superstition and Idolatry: and to that end hath declared and maintained in Speeches and printed Books divers Popish Doctrines and opinions, contrary to the Articles of Religion established. He hath urged and enjoined divers Popish and Superstitious Ceremonies, without any warrant of law; and hath cruelly persecuted those who have opposed the same, by corporal punishment and imprisonment; and most unjustly vexed others, who refused to conform thereto, by ecclesiastical censures of excommunication, suspension, deprivation, and degradation, contrary to the law of this kingdom."

*The Tenth Day of my Hearing.*

Monday, May 20, 1644. This day Mr. Serjeant Wild undertook the business against me. And at his entrance he made a Speech, being now to charge me with matter of Religion. In this speech he spake of a Tide, which came not in all at once: and so he said it was in the intended alteration of Religion. First, a Conivance, then a Toleration, then a Subversion. Nor this, nor that: but a tide it seems he will have of Religion. And I pray God his Truth (the true Protestant religion here established) sink not to so low an ebb, that men may with ease wade over to that side, which this gentleman seems most to hate. He fears both Ceremonies and Doctrine: but in both he fears where no fear is; which I hope shall appear. He was pleased to begin with Ceremonies.

I. In this he charged first my Chapel at Lambeth, and Innovation in Ceremonies there.

1. The first Witness for this was Dr. Featly: he says, (1.) There were alterations since my predecessor's time. And I say so too, or else my chapel must lie more undecently than is fit to express. He says, I turned the Table North and South. The Injunction says it shall

be so. (Injunct. of Eliz. fine.) 'And then the Innovation was theirs in going from, not mine in returning to that way of placing it. Here Mr. Browne, in his last reply in the house of commons, said, That I cut the Injunction short, because in the Words immediately following it is ordered, "That this place of standing shall be altered, when the Communion is administered." But first, the Charge against me is only about the place of it: of which that Injunction is so careful, that it commands, "That when the Communion is done, it be placed where it stood before." Secondly, it was never charged against me, that I did not remove it at the time of Communion, nor doth the reason expressed in the Injunction require it; which is, "When the number of Communicants is great, and that the minister may be the better heard of them." Neither of which was necessary in my Chapel, where my number was not great, and all might easily hear.'

(2.) The second thing which Dr. Featly said, was in downright terms, That the Chapel lay nastily, all the time he served in that house. Was it one of my faults, too, to cleanse it?

(3.) Thirdly, He says, the windows were not made up with coloured glass, till my time. The truth is, they were all shameful to look on, all diversely patched, like a poor beggar's coat. Had they had all white glass, I had not stirred them. And for the Crucifix, he confesses it was standing in my predecessor's time, though a little broken: so I did but mend it, I did not set it up (as was urged against me.) And it was utterly mistaken by Mr. Browne, [In his Reply.] that I did repair the Story of those Windows, by their like in the Mass-Book. No; but I and my secretary made out the Story, as well as we could, by the remains that were unbroken. Nor was any proof at all offered, that I did it by the pictures in the Mass-Book; but only Mr. Prynne testified, that such pictures were there; whereas this argument is of no consequence: there are such pictures in the Missal, therefore I repaired my windows by them. The windows contain the whole Story from the Creation to the Day of Judgment: three lights in a window; the two side-lights contain the types in the Old Testament, and the Middle-Light the Antitype and Verity of Christ in the New: and I believe the types are not in the pictures in the missal. In the mean time, I know no crime or superstition in this history. And though Calvin do not approve Images in Churches, [Calv. 1 Instit. c. 11. § 12.] yet he doth approve very well of them which contain a history; and says plainly, that these have their use, in *docendo et admonendo*, in teaching and admonishing the people: and if they have that use, why they may not instruct in the church, as well as out, I know not. Nor do the Homilies in this particular differ much from Calvin. [Hom. of Idol. par. 2. to. 2. p. 27. fine.]

But here the statute of Edw. 6, (3 and 4

Ed. 6, c. 10.) was charged against me, which requires "the destruction of all Images, as well in Glass-Windows, as elsewhere." And "this was also earnestly pressed by Mr. Browne, when he repeated the sum of the Charge against me in the House of Commons." To which I answered at both times: first, That the statute of Edw. 6, spake of other Images; and that Images in Glass-Windows were neither mentioned, nor meant in that law: the words of the statute are, "Any Images of stone, timber, alabaster or earth, graven, carved or painted, taken out of any church, &c. shall be destroyed, &c." and not reserved to any superstitious use. So here is not a word of Glass-windows, nor the Images that are in them. Secondly, that the contemporary practice (which is one of the best expounders of the meaning of any law) did neither destroy all coloured windows, though Images were in them in the queen's time, nor abstain from setting up of new, both in her and king James's time. And as the body of this Statute is utterly mistaken, so is the Penalty too; which, for the first and second offence, is but a small Fine, and but imprisonment at the king's will for the third. "A great way short of punishment for Treason. And I could not but wonder, that Mr. Browne should be so earnest in this point, considering he is of Lincoln's-Inn, where Mr. Prynne's zeal hath not yet beaten down the Images of the Apostles in the fair Windows of that Chapel; which windows also were set up new, long since that statute of Edw. 6. And it is well known, that I was once resolved to have returned this upon Mr. Browne in the house of commons, but changed my mind, lest thereby I might have set some furious spirit on work to destroy those harmless goodly windows, to the just dislike of that worthy Society."

But to the Statute Mr. Browne added, That the destruction of all Images, as well in windows as elsewhere, was commanded by the Homilies of the church of England, and those Homilies confirmed in the Articles of Religion [Art. 35.] and the Articles by act of parliament. This was also urged before; and my Answer was, 1. That though we subscribed generally to the doctrine of the Homilies, as good; yet we did not express, or mean thereby to justify and maintain every particular phrase or sentence contained in them. And 2. That the very words of the Article to which we subscribe, are, "That the Homilies do contain a godly and a wholesome doctrine, and necessary for those times." Godly, and wholesome for all times; but necessary for those, when people were newly weaned from the worship of Images: afterwards, neither the danger nor the scandal alike. "Mr. Browne in his Reply said, "That since the Doctrine contained in the Homilies was wholesome and good, it must needs be necessary also for all times. But this worthy gentleman is herein much mistaken. Strong meat, as well spiritual as bodily, is good and wholesome; but though it be so, yet if it

'had been necessary at all times, and for all men, the Apostle would never have fed the Corinthians with milk, and not with meat, 1 Cor. iii. 1, 2. The meat always good in itself, but not necessary for them which were not able to bear it.'

(4.) The fourth thing which Dr. Featly testifies, is, That there were Bowings at the coming into the Chapel, and going up to the Communion-Table. "This was usual in queen Elizabeth's time, and of old, both among Jews, as appears in the story of Hezekiah, 2 Chron. xxix. 28, and among Christians, as is evident in Rhenanus's Notes upon Tertullian." [B. Rhenani Annot. in Tert. de Coron. Mil. p. 40.] And one of them, which have written against the late Canons, confesses it was usual in the queen's time; but then adds, "That that was a time of ignorance." [Bp. Morton de Missa, l. 6. c. 5.] What, a time of such a Reformation, and yet still a time of ignorance! I pray God the opposite be not a time of profaneness, and all is well. "Mr. Browne, in the sum of his Charge given me in the house of commons, instanced in this also. I answered as before, with this Addition, "Shall I bow to men in each house of parliament, and shall I not bow to God in his house, whither I do, or ought to come to worship him? Surely I must worship God, and bow to him, though neither altar nor communion-table be in the church."

(5.) For Organs, Candlesticks, a Picture of a history at the back of the altar, and Copes at Communions and Consecrations; all which Dr. Featly named: 1. These things have been in use ever since the Reformation. And 2. Dr. Featly himself did twice acknowledge that it was in my Chapel, as it was at Whitehall; no difference. And it is not to be thought, that queen Elizabeth and king James would have endured them all their time in their own chapel, had they been introductions for Popery. And for Copes, they are allowed at times of Communion by the Canons of the church. [Can. Eccles. Angl. 24.] So that these, all or any, are very poor motives from whence to argue an alteration of religion.

2. The second Witness against my Chapel was sir Nathaniel Brent: But he says not so much as Dr. Featly; and in what he doth say, he agrees with him, saving that he cannot say, whether the Picture at the back of the Communion-Table were not there before my time.

3. The third Witness for this Charge was one Mr. Boreman, who came into my Chapel at prayers-time, when I had some new plate to consecrate for use of the Communion; and I think it was brought to me for that end by Dr. Featly. This man says first, He then saw me bow, and wear a cope. That is answered. Secondly, That he saw me consecrate some plate; that in that consecration I used some part of Solomon's Prayer at the Dedication of the Temple; and that in my prayer I did desire God to accept those vessels. No fault in any of the three. For in all ages of the Church, especially since Constantine's time, that reli-

gion hath had public allowance, there have been Consecrations of sacred vessels, as well as of churches themselves. [Tho. p. 3. q. 63. A. 6. ad Secundum.] And these inanimate things are holy, in that they are deputed and dedicated to the service of God. And we are said "to minister about holy things," 1 Cor. ix. 13. And the Altar is said "to sanctify the gift," Sr. Matth. xxiii. 19, which it could not do, if itself were not holy. So then, if there be no dedication of these things to God, no separation of them from common use, there is neither thing nor place holy: And then no sacrilege; no difference between churches and common houses, between Holy Tables, so the Injunction calls them (Injunct. of Q. Eliz. in fine) and ordinary tables. But I would have no man deceive himself; Sacrilege is a grievous sin, and was severely punished, even among the Heathen. And St. Paul's question puts it home, would we consider of it; "Thou which abhorrest Idols, committest thou Sacrilege?" Rom. ii. 22. Thou which abhorrest Idols, to the very defacing of Church-Windows, dost thou, thou of all other, commit Sacrilege, which the very Worshipers of idols punished? And this being so, I hope my use of a part of Solomon's Prayer, or the words of my own prayer ("That God would be pleased to accept them,") shall not be reputed faults.

But here stepped in Mr. Prynne, and said, This was according to the form in *Misali purvo*. But it is well known I borrowed nothing thence. All that I used was according to the copy of the late reverend bishop of Winchester, bishop Andrews, which I have by me to be seen, and which himself used all his time.

II. Then from my Chapel he went to my Study; and there the second Charge was, 1. That I had a Bible with the five wounds of Christ fair upon the cover of it. This was curiously wrought in needlework. The bible was so sent me by a lady, and she a protestant; I was loth to deface the work: but the Bible I kept in my study from any man's hand or eye, that might take offence at it. 'Mr. Browne touched upon this, and my Answer was the same, saving that I mentioned not the lady. '2. That I had in my study a missal, and divers other books belonging to the Roman liturgy.' My Lords, it is true, I had many; but I had more of the Greek liturgies than the Roman: And I had as many of both, as I could get. And I would know, how we shall answer their Errors, if we may not have their Books? I had Liturgies, all I could get, both antient and modern. I had also the Alcoran in divers copies. If this be an argument, why do they not accuse me to be a Turk? 3. To this Charge was added my private Prayer-book, which Mr. Prynne had taken from me in his search. Where first I observed, That the secrets between God and my soul were brought to be divulged in open court. '*Nihil gravius dicam*: But see whether it can be paralleled in Heathenism.' But what Popery was found in

these prayers? Why, first, they said, My prayers were in canonical hours, *hora sexta*, et *hora nona*, &c. I enjoined myself several hours of prayer; that, I hope, is no sin: And if some of them were church hours, that is no sin neither: "Seven times a day will I praise thee," (Psal. cxix.) was the prophet David's, long before any Canonical hours. And among Christians they were in use before Popery got any head. God grant this may be my greatest sin! Secondly, The Prayer which I made at the Consecration of the chapel at Hammer-smith. I desire that might be read, or any other. No offence found. Thirdly, The word *Prostratus* in my private devotions, before I came to the Eucharist. If I did so to God, what is that to any man? But I pray, in all this curious search, ('and Mr. Prynne here, 'and all along, spared no pains') why were no prayers to the B. Virgin and the saints found, if I were so swallowed up in Popery?

III. From my Study he went on to my Gallery. The serjeant would find out Popery ere he had done. Thence I was charged with three pictures: The first of them was a fair picture of the four fathers of the western church, St. Ambrose, St. Jerome, St. Augustine and St. Gregory. It was as lawful to have this Picture as the picture of any other men. Yea, but there was a Dove pictured over them, and that stood for the Holy Ghost. That is more than any witness did or durst depose. The second was the *Ecce Homo*, as Pilate brought Christ forth, and shewed him to the Jews. This picture is common, and I yet know no hurt of it, so it be not worshipped: and that I detest as much as any man, and have written as much against it as any protestant hath: [Cont. Fisher. § 33. p. 279.] And it was then read in part. And for both these pictures I answered out of Calvin; [L. 1. Inst. c. 11. § 12.] That it is lawful to make, and have the picture of any things, *quorum sint capaces oculi*, which may be seen. Now the Dove was visible and seen, St. John i. 32, 33. That is for the first picture. And for the second, the *Ecce Homo*, why did Pilate say *Ecce*, but that the Jews might and did see him? John xix. So both Pictures lawful by the rule laid down by Calvin.

'Mr. Browne charged against both these Pictures very warmly. And when I had answered as before, in his Reply he fell upon my Answer; and said it was in the Homilies ('but either he quoted not the place, or else slipped it), That every picture of Christ was a lye, because whole Christ cannot be pictured. 'But by this argument it is unlawful to picture any man; for the whole man cannot be pictured. Who ever drew a picture of the soul? 'And yet who so simple as to say the picture of a man is a lye? Besides, the *Ecce Homo* is a picture of the humanity of Christ only, which may as lawfully be drawn as any other man. And it may be I may give farther Answer, when I see the place in the Homilies.'

The third Picture found in my Gallery, I marvel why it was produced; for it relates to

that of our Saviour, St. John x. 1, 2, where he says, "That the shopherd enters into the sheepfold by the door, but they which climb up to enter another way, are thieves and robbers." And in that picture the pope and the friars are climbing up to get in at the windows: So it is as directly against Popery as can be. Besides, it was witnessed before the Lords by Mr. Walter Dobson, an ancient servant, both to archbishop Bancroft and Abbot, That both the *Ecce Homo* and this picture were in the Gallery when he came first to Lambeth-house, which was about 40 years since: so it was not brought thither by me to countenance Popery\*. And I hope your lordships do not think me such a fool; if I had an intencion to alter religion, I should hang the profession of it openly in my gallery, thereby to bring present danger upon myself, and destroy the work which, themselves say, I intended cunningly. And if there be any error in having and keeping such Pictures, yet this is no sufficient proof that I had any intencion to alter the rehigion established; which I desire may be taken notice of once for all.

IV. From my Gallery, the Serjant crossed the Water to White-Hall (and sure in haste; for at that time he took no leave of captain Guest, or his wife, before he left Lambeth): At the Court he met sir Henry Mildmay. 1. This knight being produced by him against me, says, That in my time Bowings were constantly used in the Chapel there. But, 1. Dr. Featly told your lordships, there was nothing in my Chapel but as it was in use at White-Hall. So all the Popery I could bring, was there before. And, 2. If bowing to God in his own house be not amiss, (as how it should I yet know not) then there can be no fault in the constant doing of it: "Quod semel fecisse bonum est, non potest malum esse, si frequenter fiat." So St. Jerome teaches. [S. Hierom. adversus Vigilantium.] 3. I am very sorry, that any reverence to God in his house, and in the time of his worship, should be thought too much. I am sure the Homilies, so often pressed against me, cry out against the neglect of Reverence in the Church. [Tom. 2, Hom. 1. Princip.] This Passage was read; and by this it seems, the Devil's cunning was, so soon as he saw superstition thrust out of this church, to bring irreverence and profaneness in. Here Mr. Browne having pressed 'this Charge, replies upon me in his last, That 'I would admit no mean, but either there must 'be superstition or profaneness; whereas my 'words can infer no such thing. I said "this 'was the Devil's practice:" I would have 'brought in the mean between them, and pre-

'served it too, by God's blessing, had I been 'let alone.'

2. Sir Henry says next, That he knew of no Bowings in that Chapel before my time, but by the right hon. the knights of the garter at their solemnity. No time else? Did he ever see the king his master offer before my time? Or did he ever see him offer, or the Lord Chamberlain attend him there, without Bowing and Kneeling too? And for the Knights of the Garter, if they might do it without superstition, I hope I and other men might do so too: Especially since they were ordered by Hen. 5, to do it with great reverence, *admodum sacerdotum*: Which proves the antiquity of this ceremony in England. [In Registro Windesoriensi, p. 65, it is commonly called the Black Book.]

3. He farther says, There was a fair Crucifix in a piece of hangings hung up behind the altar, which he thinks was not used before my time. But that he thinks so, is no proof. 4. He says, This fair piece was hanged up in the Passion Week, as they call it. As they call it? Which *they*? Will he shut out himself from the Passion Week? All Christians have called it so for above 1,000 years together; and is that become an innovation too, as they call it? [Et observabatur ab omnibus. Vidclius (and he no way superstitious in Ignat. Epist. ad Philip. Exercit. 16, c. 3.)] 5. He says, The hanging up of this piece was a great scandal to men but indifferently affected to religion. Here I humbly crave leave to observe some few particulars. 1. That here is no proof so much as offered, that the piece was hung up by me, or my command. 2. That this gentleman came often to me to Lambeth, and professed much love to me; yet was never the man that told me his conscience, or any man's else, was troubled at it: which had he done, that should have been a scandal to no man. 3. That if this were scandalous to any, it must be offensive in regard of the workmanship; or *qualenus tale*, as it was a Crucifix; not in regard of the works certainly, for that was very exact. And then if it were because it were a Crucifix, why did not the old one offend sir Henry's conscience as much as the new? For the piece of hangings, which hung constantly all the year at the back of the altar, 30 years together, upon my own knowledge, and somewhat above, long before, as I offered proof by the vestry-men, and so all the time of sir Henry's being in court, had a crucifix wrought in it, and yet his conscience never troubled at it. 4. That he could not possibly think that I intended any Popery in it, considering how hateful he knew me to be at Rome, beyond any my predecessors since the Reformation: for so he protested at his return from thence to myself. And I humbly desire a *Salvo*, that I may have him called to witness it: which was granted.

When they had charged me thus far, there came up a Message from the House of Commons. I was commanded to withdraw: but that business requiring more haste, I was dis-

\* All these pictures were placed in the Gallery by Cardinal Poole, when he built it, and continue there still, having not been defaced in the time of the Rebellion, as were the Windows of the Chapel, and the Chapel itself converted into a Dancing-Room; Archbishop Parker's tomb in the middle of it being first beat down, and his bones cast upon the dunghill.

missed with a command to attend again on Wednesday, May 22. But then I was put off again to Monday, May 27. And after much pressing for some maintenance, considering how oft I was made attend, and with no small expence; on May 25, I had an Order from the Committee of Sequestrations, to have 200*l.* allowed me out of my own now sequestered estate: It was a month before I could receive this. And this was all that ever was yet allowed me since the Sequestration of my Estate, being then of above two years continuance.

*The Eleventh Day of my Hearing.*

I. Monday, May 27, 1644. This day Mr. Serjeant Wilde followed the Charge upon me; and went back again to my Chapel-windows at Lambeth: three Witnesses against them. The first was one *Pember*, a glazier. He says, there was in one of the glass-windows on the north-side, the picture of an old man with a Glory, which he thinks was of God the Father. But his thinking so is no proof; nor doth he express in which of the north-windows he saw it. And for the Glory, that is usual about the head of every saint. And Mr. *Browne*, who was the second Witness, and was trusted by me for all the work of the windows, both at Lambeth and Croydon, says expressly upon his oath, that there was no picture of God the Father in the windows at Lambeth. But he says, he found a Picture of God the Father in a window at Croydon, and archbishop Cranmer's arms under it; and that he pulled it down. So it appears this Picture was there before my time, and continued there in so zealous an archbishop's time, as Cranmer was well known to be; and it was pulled down in my time. Neither did I know till now, that ever such a picture was there; and the Witness deposes he never made me acquainted with it. The third Witness was Mr. *Prynn*. He says, He had taken a survey of the windows at Lambeth. And I doubt not his diligence. He repeated the Story in each window. I have told this before, and shall not repeat it. He says, the pictures of these stories are in the Mass-Book. If it be so, yet they were not taken thence by me. Archbishop Morton did that work, as appears by his device in the windows. He says, the Story of the Day of Judgment was in a window in *atrio*, that must not come into the chapel. Good Lord! whither will malice carry a man? The Story opposite is of the Creation; and what, must not that come into the Chapel neither? The chapel is divided into an inner and outer chapel: in this outward the two windows mentioned are; and the partition or skreen of the chapel, which makes it two, was just in the same place where now it stands, from the very building of the chapel, for aught can be proved to the contrary. So neither I, nor any man else, did shut out the Day of Judgment. He says, I had read the Mass-book diligently. How else should I be able really to confute what is amiss in it? He says, I had also a Book of Pictures concerning the

Life of Christ in my Study. And it was fit for me to have it; for some things are to be seen in their Pictures for the people, which the writings do not, perhaps dare not avow.

II. The second Charge of this day was about the Administration of the Sacrament in my chapel. The Witnesses two.

The first was Dr. *Haywood*, who had been my chaplain in the house. They had got from others the Ceremonies there used, and then brought him upon oath. He confessed he administered in a Cope; and the Canon warranted it. [Can. Eccles. Angl. 24.] He confesses, as it was urged, that he fetched the elements from the Credential (a little Side-table as they called it), and set them reverently upon the Communion-Table. Where is the offence? For 1. the Communion-table was little, and there was hardly room for the elements to stand conveniently there, while the service was in administration. And, 2. I did not this without example; for both bishop Andrews, and some other bishops, used it so all their time, and no exceptions taken. The second witness was Rob. Cornwall, one of my menial servants; a very forward witness he shewed himself, but said no more than is said and answered before; both of them confessing that I was sometimes present.

III. The third Charge was about the Ceremonies at the Coronation of his majesty. And, 1. out of my Diary, Feb. 2, 1625, it is urged, that I carried back the Regalia, offered them on the Altar, and then laid them up in their place of safety. I bare the place at the Coronation of the dean of Westminster, and I was to look to all those things, and their safe return into custody, by the place I then executed; and the offering them could be no offence: for the king himself offers upon solemn days; and the right hon. the Knights of the Garter offer at their solemnity; and the Offertory is established by law in the Common-Prayer Book of this Church: and the prebendaries assured me it was the custom for the dean so to do. 2. They charged a Marginal Note in the book upon me, that the unction was *in formâ crucis*. That Note doth not say that it ought so to be done; but it only relates the practice, what was done. And if any fault were in anointing the king in that form, it was my predecessor's fault, not mine; for he so anointed him. 3. They say, there was a Crucifix among the Regalia, and that it stood upon the altar at the Coronation, and that I did not except against it.\* My predecessor executed at that time, and I believed would have excepted against the Crucifix, had it stood there: but I remember not any there; yet if there were, if my predecessor approved the standing of it, or were content to connive at it, it would have been made but a scorn, had I quarrelled it. 4.

\* Heylin affirmeth, that the old crucifix being found among the Regalia, was then placed upon the altar. Life of Laud, p. 144.

They say, One of the prayers was taken out of the Pontifical. And I say, if it were, it was not taken thence by me: and the Prayers are the same that were used at king James's coronation: and so the prayer be good, and here is no word in it that is excepted against, it is no matter whence it is taken.

Then leaving the Ceremonies, he charged me with two Alterations in the body of the king's Oath. One added, namely these words ("agreeable to the king's prerogative;") the other omitted, namely, these words, (*quæ populus elegerit*, "which the people have chosen, or shall chuse.") For this latter, the Clause omitted, that suddenly vanished; for it was omitted in the oath of king James, as is confessed by themselves in the printed Votes of this present parliament. But the other highly insisted on, as taking off the total assurance which the subjects have by the Oath of their prince for the performance of his laws. 1. I humbly conceive this Clause takes off none of the peoples assurance; none at all. For the king's just and legal prerogative, and the subjects assurance for Liberty and Property, may stand well together, and have so stood for hundreds of years. 2. That Alteration, whatever it be, was not made by me; nor is there any Interlining or Alteration so much as of a letter found in that book. 3. If any thing be amiss therein, my predecessor gave that Oath to the king, and not I. I was merely ministerial both in the preparation, and at the coronation itself, supplying the place of the dean of Westminster.

After this Day's work was ended, it instantly spread all over the city, that I had altered the king's Oath at his Coronation, and from thence into all parts of the kingdom; as if all must be true which was said at the bar against me, what Answer soever I made: the people, and some of the Synod, now crying out, That this one thing was enough to take away my life. And though this was all that was charged this day concerning this Oath; yet seeing how this fire took, I thought fit, the next day that I came to the bar, to desire that the Books of the Coronation of former kings, especially those of queen Elizabeth and king James, might be seen and compared, and the copies brought into the court, both from the Exchequer, and such as were in my study at Lambeth, and a fuller inquisition made into the business; in regard I was as innocent from this crime, as when my mother bare me into the world. A *Salvo* was entered for me upon this. And every day that I after came to the bar, I called upon this business: but somewhat or other was still pretended by them which managed the Evidence, that I could not get the books to be brought forth, nor any thing to be done, till almost the last day of my hearing. Then no Books could be found in the Exchequer, nor in my Study, but only that of king James; whereas, when the keys were taken from me, there were divers books there, as is confessed in the printed Votes of this parliament, and

one of them with a watchet-sattin cover, now missing: And whether this of king James (had not my Secretary, who knew the Book, seen it drop out of Mr. Prynn's bag) would not have been concealed too, I cannot tell. At last, the Book of king James's Coronation, and the other urged against me concerning king Charles, were seen and compared openly in the Lords house, and found to be the same Oath in both, and no interlining or alteration in the Book charged against me.

'This business was left by the Serjeant to Mr. Maynard, who made the most that could be out of my Diary against me: and so did Mr. Browne, when he came to give the sum of the Charge against me, both before the Lords, and after in the House of Commons. And therefore for the avoiding of all tedious repetition, and for that the Arguments which both used are the same, and because I hold it not fit to break a Charge of this moment into divers pieces, or put them in different places, I will here set down the whole business together, and the Answer which I then gave.

'Mr. Browne, in the sum of the Charge against me in the Commons House, when he came to this Article, said, He was now come to the business so much expected. And I humbly besought that honourable house, if it were a matter of so great expectation, it might be of as great attention too, while I should follow that worthy gentleman step after step, and answer as I went.

'1. And, first, he went about to prove out of my Diary, that this Addition (of the king's Prerogative) to the Oath, was made by me. Thus he says, That Dec. 31, 1625, I went to Hampton-Court. That is true. He says, That there, Jan. 1, I understood I was named with other Bishops to meet and consider of the Ceremonies about the Coronation; and that, Jan. 4, we did meet at White-Hall accordingly; and that, Jan. 6, we gave his majesty an Answer. Not I, (as it was charged) but We gave his majesty answer. So if the Oath had been changed by me, it must have been known to the Committee, and broken forth to my ruin long since. Then he says, That Jan. 16, I was appointed to serve at the Coronation, in the room of the dean of Westminster. That is no crime: And it is added in the Diary, that this Charge was delivered unto me by my predecessor. So he knew that this service to attend at the Coronation was imposed upon me. He says next, That Jan. 18, the duke of Buckingham had me to the king, to shew his majesty the Notes we had agreed on, if nothing offended him. These were only Notes of the Ceremonies. And the other Bishops sent me, being puny, to give the account. Then he says, Jan. 23, 'It is in my Diary, *librum habui puratum*, 'I had a Book ready.' And it was time, after such meetings, and the Coronation being to follow Feb. 2, and I designed to assist and attend that Service, that I should have a Book ready: The Ceremonies were too long

'and various to carry them in memory. And whereas it is urged, That I prepared and altered this Book, the words in my Diary are *paratum habui*, I had the Book ready for my own use in that service. Nor can *paratum habui*, signify preparing or altering the Book. And, Thirdly, it is added there, That the Book which I had ready in my hands, did agree *per omnia cum libro regali*. And if it did agree in all things with the King's recorded Book then brought out of the Exchequer, where then is the Alteration so laboriously sought to be fastened on me? I humbly beseech you to mark this.

'Yet out of these premises put together, Mr. Browne's inference was, That I made this Alteration of the Oath. But surely these premises, neither single nor together, can produce any such conclusion; but rather the contrary. Beside, inference upon evidence is not evidence, unless it be absolutely necessary; which all men see that here it is not. But I pray observe: Why was such a sudden stay made at Jan. 23, whereas it appears in my Diary at Jan. 31, that the Bishops were not alone trusted with this Coronation-Business, *sed alii proceres*, but other great and noblemen also? And they did meet that Jan. 31, and sat in council about it. So the Bishops Meetings were but preparatory to ease the Lords, most of the Ceremonies being in the Church-way. And then can any man think that these great lords, when they came to review all that was done, would let the Oath be altered by me, or any other, so materially, and not check at it? It is impossible.

'2. Secondly, This Gentleman went on to charge this Addition upon me thus: There were found in my Study at Lambeth two Books of king James's Coronation; one of them had this Clause or Addition in it, and the other had it not; and we cannot tell by which he was crowned. Therefore it must needs be some wilful error in me, to make choice of that Book which had this addition in it, or some great mistake. First, If it were a mistake only, then it is no crime: and wilful error it could not be; for being named one of them that were to consider of the Ceremonies, I went to my predecessor, and desired a Book, to see by it what was formerly done. He delivered me this now in question: I knew not whether he had more or no; nor did I know that any one of them differed from other. Therefore no wilful error. For I had no choice to make of this Book which had the Addition, before that which had it not, but thankfully took that which he gave me. But, secondly, if one Book of king James's Coronation, in which I could have no hand, had this addition in it, (as is confessed) then was not this a new addition of my making. And, thirdly, it may easily be seen that king James was crowned by the book which had this addition in it; this being in a fair carnation-satin cover, the

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other in paper, without a cover, and unfit for a king's hand, especially in such a great and public solemnity.

'3. In the third place, he said, There were in this Book twenty Alterations more, and all, or most in my hand. Be it so; (for I was never suffered to have the book to consider of) they are confessed not to be material. The truth is, when we met in the committee; we were fain to mend many slips of the pen, to make sense in some places, and good English in other. And the book being trusted with me, I had reason to do it with my own hand, but openly at the committee all. Yet two things, as matters of some moment; Mr. Browne checked at.'

(1.) The one was, That 'confirm' is changed into 'perform.' 'If it be so 'perform' is the greater and more advantageous to the subjects, because it includes 'execution,' which the other word doth not. Nor doth this word hinder, but that the laws and liberties are the people's already: for though they be their own, yet the king, by his place, may and ought to perform the keeping and maintaining of them, I say, (if it be so) for I was never suffered to have this book in my hands, though roughly to peruse: nor, under favour, do I believe this alteration is so made, as it is urged. [In the book which I have by me, and was transcribed from the other, it is 'confirm'.]

(2.) The other is, That the king is said to answer 'I will,' for 'I do.' But when will he? Why, all the days of his life; which is much more than *I do*, for the present. So if this change be made, it is still for the people's advantage. [And there also it is *I do grant*.] And again, I say, (if) for the reason before given. Besides, in all the Latin copies there is a latitude left for them that are trusted, to add to those interrogatories which are then put to the king any other that is just, in these words, *adiciantur predictis interrogationibus que iusta fuerint*. And such are these two mentioned, if they were made.

'4. Mr. Browne's fourth and last Objection was, That I made this Alteration of the Oath, because it agrees (as he said) with my judgment: for that in a paper of bishop Harsnett's there is a marginal Note in my hand, that *Salvo Jure Coronæ* is understood in the oaths of a king. But, first, there is a great deal of difference between *Jus Regis et Prærogativa*, between the right and inheritance of the king and his prerogative, though never so legal. And with submission, and until I shall be convinced herein, I must believe that no king can swear himself out of his native right. Secondly, If this were, and still be an error in my judgment, that is no argument at all to prove malice in my will: that because that is my judgment for *Jus Regis*, therefore I must thrust *Prærogativa Regis*, which is not my judgment, into a public oath which I had no power to alter. These were all the Proofs

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‘ which Mr. Maynard at first, and Mr. Browne at last, brought against me in this particular. And they are all but conjectural, and the conjectures weak. But that I did not alter this oath by adding the ‘ Prerogative,’ the proofs I shall bring are pregnant, and some of them necessary. They are these :

‘ 1. My predecessor was one of the grand committee for these ceremonies. That was proved by his servants to the lords. Now his known love to the public was such, as that he would never have suffered me, or any other, to make such an alteration. Nor would he have concealed such a crime in me, loving me so well as he did.

‘ 2. It is notoriously known that he crowned the king, and administered the oath (which was avowed also before the lords by his ancient servants): and it cannot be rationally conceived he would ever have administered such an altered oath to his majesty.

‘ 3. It is expressed in my Diary, at Jan. 31, 1625, (and that must be good evidence for me, having been so often produced against me) that divers great lords were in this committee for the ceremonies, and did that day sit in council upon them. And can it be thought they would not so much as compare the books? Or that comparing of them, they would endure an oath with such an alteration to be tendered to the king? Especially since it is before confessed, that one copy of king James’s coronation had this alteration in it, and the other had it not.

‘ 4. It is expressed in my Diary, and made use of against me, at Jan. 23, 1625, that this book urged against me did agree *per omnia cum Libro Regali*, in all things with the king’s book, brought out of the Exchequer. And if the book that I then had, and is now insisted upon, did agree with that book which came out of the Exchequer, and that in all things, how is it possible I should make this alteration?

‘ 5. With much labour I got the books to be compared in the lords house; that of king James’s coronation, and this of king Charles; and they were found to agree in all things to a syllable. Therefore it is impossible this should be added by me. And this, I conceive, cuts off all conjectural proofs to the contrary.

‘ Lastly, In the printed Book of the Votes (p. 706) of this present parliament, it is acknowledged, that the oath given to king James and king Charles was the same. The same: therefore unaltered. And this passage of that book I then shewed the lords in my defence. To this Mr. Maynard then replied, that the votes there mentioned were upon the word *elegerit*, and the doubt whether it should be ‘ bath chosen,’ or ‘ shall choose.’ I might not then answer to the Reply, but the Answer is plain. For, be the occasion which led on the votes what it will, as long as the oath is acknowledged the same, it is manifest it could not be altered by me. And I doubt

‘ not, but these reasons will give this honourable house satisfaction, that I added not this particular of the prerogative to the oath.

‘ Mr. Browne, in his last Reply, passed over the other arguments I know not how. But against this he took exception. He brought the Book with him, and read the passage; and said, (as far as I remember) That the Votes had relation to the word *chuse*, and not to this alteration. Which is in effect the same which Mr. Maynard urged before. I might not reply by the course of the court, but I have again considered of that passage, p. 706, and find it plain. Thus, first they say, They have considered of all the Alterations in the form of this Oath, which they can find: therefore of this Alteration also, if any such were. Then they say, “ Excepting that Oath which was taken by his majesty and his father king James.” There it is confessed, that the Oath taken by them was one and the same, called there ‘ that Oath ’ which was taken by both. Where falls the Exception then? For it is said, “ Excepting that oath, &c.” Why it follows, “ excepting that the word ‘ *chuse* ’ is wholly left out, as well ‘ hath chosen ’ as ‘ will choose.” Which is a most manifest and evident confession, that the Oath of king James and king Charles was the same in all things, to the very leaving out of the word *chuse*. Therefore it was the same oath all along: no difference at all. For *Exceptio firmat Regulam in non Exceptis*; and here is no exception at all of this Clause of the prerogative. Therefore the oath of both the kings was the same in that, or else the votes would have been sure to mention it. Where it may be observed too, that Serjeant Wilde, though he knew these Votes, and was present both at the Debate and the voting, and so must know that the word ‘ *chuse* ’ was omitted in both the oaths; yet at the first he charged it eagerly upon me, that I had left this clause of ‘ *chusing* ’ out of king Charles’s oath, and added the other. God forgive him! But the world may see by this, and some other passages, with what art my life was sought for.

‘ And yet before I quite leave this Oath, I may say, it is not altogether improbable, that this Clause, “ And agreeing to the prerogative of the kings thereof,” was added to the Oath in Edward 6’s or queen Elizabeth’s time; and hath no relation at all to “ the laws of this kingdom,” absolutely mentioned before in the beginning of this Oath; but only to the words, “ The profession of the Gospel established in this kingdom.” And then immediately follows, “ And agreeing to the prerogative of the kings thereof.” By which the king swears to maintain his prerogative, according to God’s law, and the Gospel established, against all foreign claims and jurisdictions whatsoever. And if this be the meaning, he that made the alteration, whoever it were (for I did it not), deserves thanks for it, and not the reward of a traitor.’

IV. Now to return to the Day. The fourth Charge went on with ceremonies still. But Mr. Serjeant was very nimble; for he leaped from the Coronation at Westminster, to see what I did at Oxford.

1. There the first Witness is sir *Nathaniel Brent*. And he says, The standing of the Communion-Table at St. Mary's was altered. I have answered to this situation of the Communion-Table already. And if it be lawful in one place, it is in another. For the Chapel of Magdalen-College, and Christ-Church quire, he confesses he knows of no direction given by me to either: nor doth he know whether I approved the things there done or no. So all this is no evidence. For the picture of the Blessed Virgin at St. Mary's door, as I knew nothing of it till it was done, so never did I hear any abuse or dislike of it after it was done. And here sir *Nathaniel* confesses too, that he knows not of any Adoration of it, as men passed the streets or otherwise. When this witness came not home, they urged the Statute of Merton-College, or the University, (§ 11.) where (if I took my Notes right) they say, I enjoined *debitum Reverentium*. And as I know no fault in that injunction or statute, so neither do I know what due bodily reverence can be given to God in his Church, without some bowing or genuflection.

2. The second Witness was Mr. *Corbett*. He says, that when decent reverence was required by my visitors in one of my Articles, he gave reasons against it, but sir John Lambe urged it still. First, my lords, if Mr. *Corbett's* reasons were sufficient, sir John Lambe was to blame in that; but sir John Lambe must answer it, and not I. Secondly, It may be observed, that this man, by his own confession, gave reasons (such as they were) against due reverence to God in his own house. He says, That Dr. *Frewen* told him from me, "That I wished he should do as others did at St. Mary's, or let another execute his place as proctor." This is but a hearsay from Dr. *Frewen*, who being at Oxford, I cannot produce him. And if I had sent such a message, I know no crime in it. He says, that after this he desired he might enjoy in this particular the liberty which the King and the Church of England gave him. He did so; and from that day he heard no more of it, but enjoyed the liberty which he asked. He says, Mr. *Channel* [*Cheyne*], desired the same liberty as well as he. And Mr. *Channel* had it granted as well as he. He confesses ingenuously, that the Bowing required, was only toward, not to the altar. And to the Picture at St. Mary's door, he says he never heard of any reverence done to it; and doth believe, that all that was done at Christ-Church was since my time. [And the third Witness agrees in this.] But it must be his knowledge, not his belief, that must make an evidence.

3. The third Witness was one Mr. *Bendye*. He says, There was a Crucifix in Lincoln-College chapel since my time. If there be, it is more than I know. My lord of York that now

is, when he was bishop of Lincoln, worthily bestowed much cost upon that chapel; and if he did set up a Crucifix, I think it was before I had aught to do there. He says there was Bowing at the name of Jesus. And God forbid but there should; and the Canon of the church requires it. (Can. 18.) He says, There were Latin Prayers in Lent, but he knows not who enjoined it. And then he might have held his peace. But there were Latin sermons and prayers on Ash-Wednesdays, when few came to church, but the Lent proceeders, who understood them. And in divers colleges they have their morning-prayers in Latin, and had so, long before I knew the University. The last thing he said was, That there were Copes used in some Colleges, and that a traveller should say upon the sight of them, "That he saw just such a thing upon the Pope's back." This wise man might have said as much of a gown: He saw a gown on the Pope's back, therefore a protestant may not wear one. Or entering into St. Paul's he may cry, "Down with it! for I saw the Pope in just such another Church in Rome."

4. Then was urged the conclusion of a Letter of mine sent to that university; the words were to this effect: "I desire you to remember me a sinner, *quoties coram Altare Dei procidatis*." The charge lay upon the word *procidatis*; which is no more, than that when they there fall on their knees, or prostrate to prayer, they would remember me. In which desire of mine, or expression of it, I can yet see no offence. No, nor in *coram Altare*, their solemnest time of prayer being at the communion. 'Here Mr. *Browne* aggravated the things done in that university; and fell upon the titles given me in some Letters from thence: but because I have answered those titles already, I refer the reader thither, and shall not make here any tedious repetition. Only this I shall add, 'That in the Civil Law it is frequent to be seen, 'that not Bishops only one to another, but the great Emperors of the world have commonly given that title of *Sanctitus vestra*, to bishops of meaner place than myself; to say no more. 'But here Mr. *Browne*, in his last Reply, was pleased to say, This title was not given to any bishop of England. 1. If I had my books about me, perhaps this might be refuted. 2. Why should so grave a man as he so much disparage his own nation? Is it impossible (be my unworthiness what it will) for an English bishop to deserve as good a title as another? 3. Be that as it may, if it were (as certainly it was) lawfully given to other bishops, though they not English, then it is neither blasphemy, nor assumption of papal power, as was charged upon it.'

V. From Oxford Mr. Serjeant went to Cambridge. And I must be guilty, if aught were amiss there too. For this fifth Charge were produced three Witnesses, Mr. *Wallis*, Mr. *Greece*, and Mr. *Seaman*. Their testimonies agreed very near: so I will answer them to-

gether. First, they say, That at Peter-House there were copes and candlesticks, and pictures in the Glass-windows; and the like. But these things I have often answered already, and shall not repeat. They say, The chief authors of these things were Dr. Wren and Dr. Comenius. They are both living, why are they not called to answer their own acts? For here is yet no shew of proof to bring any thing home to me. For no one of them says, that I gave direction for any of these. No, (says Mr. Serjeant) but why did I tolerate them? 1. No man complained to me. 2. I was not chancellor, and endured no small envy for any little thing that I had occasion to look upon in that place. And 3. This was not the least cause, why I followed my right for power to visit there. And though that power was confirmed to me, yet the times have been such, as that I did not then think fit to use it. It would have but heaped more envy on me, who bare too much already. 'As for Mr. Greece, who hath laboured much against me in all this business, God forgive him; and while he inherits his father's ill affections to me, God preserve him from his father's end!'

VI. From Cambridge he went to the Cathedrals, and first to Canterbury. Here the Charge is bowing *versus Altare*; the two Witnesses, two prebendaries of that church, Dr. Jackson and Dr. Blechenden. And first, Dr. Jackson says, the bowing was *versus Altare*; so not to, but toward the Altar: and Dr. Blechenden says, it was the adoration of the high majesty of God, to whom, if no Altar were there, I should bow. Dr. Jackson says, This bowing was to his grief. Strange! I avow to your lordships and the world, no man did so much approve all my proceedings in that church, as he; and for this particular, he never found the least fault with it to me: and if he conceal his grief, I cannot ease it. He says, This Bowing was not in use till within this six or seven years. Sure the old man's memory fails him. For Dr. Blechenden says, The Communion-Table was railed about, and Bowings before it, when he came first to be a member of that church; and saith upon his oath, that is above ten years ago; and that it was practised before their new statutes were made; and that in those statutes no punishment inflicted for the breach or not performance of this reverence. I could tell your lordships how often Dr. Jackson hath shifted his opinions in religion, but that they tell me their Witnesses must not be scandalized. As for the Statutes, my secretary Mr. Dell, who copied them out, testified here to the lords, that I left out divers Superstitions which were in the old Book, and ordained many sermons in their rooms.

The next Cathedral he instanced in, was Winchester. But there is nothing but the old objections, Copes. And the wearing of them is warranted by the canon; (Can. 21.) and Reverence at coming in and going out of the

church. And that great kings have not (in better ages) thought much to do. And they did well to instance in the college of Winchester, as well as the Church; for it is confessed, the Injunction sent thither requires, that the Reverence used be such as is not dissonant from the Church of England. So this may be a comment to the other Injunctions. But for the Copes in Cathedrals, Mr. Browne in his last Reply was not satisfied. For he said, the Canon mentioned but the wearing of one Cope. Be it so: but they must have that before they can wear it. And if the Canon enjoin the wearing of one, my Injunction might require the providing and using of one. Besides, if there be no Popery, no introduction to Superstition in the having or using of one; then certainly there can be none in the having of more for the same use: the Superstition being lodged in the misuse, not in the number.'

VII. From the Cathedrals Mr. Serjeant went to view some Parish-Churches. And first it is charged, That in a Parish-Church at Winchester two Seats were removed, to make way for railing in of the Communion-Table. But for aught I know, this might have been concealed. For it was liked so well, that they to whom the seats belonged, removed them at their own charges, that the other might be done.

The next instance was in St. Gregory's Church, by St. Paul's. The Charge was, the placing of the Communion-Table Altar-wise. To the Charge itself Answer is given before. The particulars which are new, are these: the Witness Mr. Wyan. He says, the Order for such placing of the Table was from the Dean and Chapter of St. Paul's. And St. Gregory's is in their peculiar jurisdiction. So the Holy Table was there placed by the Ordinary, not by me. He says next, That the parishioners appealed to the Arches, but received an order to command them and the cause to the Council-Board: That it was a full Board when the cause was heard, and his majesty present; and that there I maintained the queen's Injunction (Q. Eliz. Injunct. fine.) about placing the Communion-Table. In all this, here is nothing charged upon me, but maintenance of the Injunction: and I had been much to blame, if I should not have maintained it. He says, sir Henry Martin came and saw it, and said it would make a good Court-Cupboard. If sir Henry did say so, the scorn ill became either his age or profession; though a Court-Cupboard be somewhat a better phrase than a Dresser. God forgive them who have in print called it so! He says, That hereupon I did say, "That he which spake that, had a Stigmatical Puritan in his bosom." This man's memory serves him long for words: this is many years since; and if I did speak any thing sounding this way, it is more like I should say "Schismatical," than "Stigmatical Puritan." But let him look to his oath; and which word se-

ever I used, if sir Henry used the one, he might well hear the other. For a prophane speech it was, and little becoming a Dean of the Arches. He says, That soon after this sir Henry was put out of his place. Not very soon after this; for I was at the time of this business (as far as I remember) bishop of London, and had nothing to do with the disposing of his place. After, when I came to be Archbishop, I found his patent was void, neither could sir Henry himself deny it. And being void, and in my gift, I gave it to another.

He says farther, That it was urged that this way of placing the Communion-Table was against the Word of God, in bishop Jewel's and Mr. Fox's judgment; and that I replied, "It were better they should not have these Books in churches, than so to abuse them." 1. For aught I yet know (and in these straits of time the Books I cannot come at), their judgment, rightly understood, is not so. 2. Though these two were very worthy men in their time, yet every thing which they say is not by and by the Doctrine of the Church of England. And I may upon good reason depart from their judgment in some particulars, and yet not differ from the Church of England. As in this very particular, the Injunction for placing the Table so, is the act of the Queen and the Church of England. And I conceive the Queen, then upon the Act of Reformation, would not have enjoined it, nor the Church obeyed it, had it been against the Word of God. 3. If I did say, "That if they could make no better use of Jewel and the Book of Martyrs, it were better they had them not in the Churches;" they gave too great occasion for the speech; for they had picked divers things out of those Books which they could not master, and with them distempered both themselves and their neighbours. And yet, in hope other more modest men might make better use of them, I never gave counsel to have those Books removed (nor is that so much as charged) but said only thus, That if no better use would be made of them, then that last remedy; but never till then. 'This last Passage Mr. Browne insisted upon: The taking of good Books from the people. But as I have answered, there was no such thing done, or intended; only a word spoken to make busy men see how they abused themselves and the church, by misunderstanding and misapplying that which was written for the good of both.' Lastly, It was urged, he said, that the Communion-Table must stand Altar-wise, that stragglers which come and look into these churches, might not see such a disproportion; the Holy Table standing one way in the Mother-Church, and quite otherwise in the Parochial annexed. And truly, to see this, could be no commendation of the discipline of the Church of England. But howsoever, Mr. Clarke (the other Witness with Wyan, and agreeing with him in the most) says plainly, that it was the lord of Arundel that spake this, not I; and that he was seconded in it

by the lord Weston, then Lord Treasurer, not by me.

VIII. The last Charge of this day was a Passage out of one Mr. Shelford's Book, p. 20, 21, "That they must take the Reverend Prelates for their examples, &c." And Mr. Prynn witnessed the like was in the Missal, p. 256. Mr. Shelford is a mere stranger to me, his Book I never read; if he have said any thing unjust or untrue, let him answer for himself. As for the like to that, which he says, being in the Missal, though that be but a weak argument, yet let him save it.

Here this day ending, I was put off to Saturday, June 1. And then again put off to Thursday, June 6, which held.

#### *My Twelfth Day of Hearing.*

Thursday, June 6, 1644. This day Serjeant Wilde, instead of beginning with a new Charge, made another long Reply to my Answers of the former day. Whether he found that his former Reply, made at the time, was weak, and so reputed, I cannot tell. 'But another he made, as full of premeditated weakness, as the former was of sudden. Mr. Prynn, I think, perceived it, and was often at his ear; but Mr. Serjeant was little less than angry, and would on.' I knew I was to make no answer to any Reply, and so took no Notes; indeed holding it all as it was, that is, either nothing, or nothing to the purpose. This tedious Reply ended;

I. Then came on the First Charge about the Window of coloured glass set up in the new chapel at Westminster: It was the History of the coming down of the Holy Ghost upon the Apostles. This was charged to be done by me, and at my cost: the Witnesses, Mr. Browne, employed in setting up the Window, and Mr. Sutton the glazier. These men say, that Dr. Newell, sub-dean of Westminster, gave order for the window, and the setting of it up; but they know not at whose cost, nor was any order given from me. So here is nothing charged upon me. And if it were, I know nothing amiss in the Window. As for the King's Arms being taken down, as they say, let them answer that did it. Though, I believe, that the King's Arms standing alone in a white window, was not taken down out of any ill meaning, but only out of necessity to make way for the History.

II. The Second Charge was the Picture of the Blessed Virgin set upon a new-built door at St. Mary's in Oxford. Here alderman Nixon says, That some passengers put off their hats, and, as he supposes, to that picture. But, my Lords, his supposal is no proof. He says, that the next day he saw it. But what did he see? Nothing, but the putting off the hat; for he could not see why, or to what, unless they which put off, told it. They might put off to some acquaintance that passed by. He farther says, he saw a man in that porch upon his

knees, and, he thinks, praying; but he cannot say to that. 'But then, if the malice he hath long borne me would have suffered him, he might have staid till he knew to whom he was praying, for till then it is no evidence.' He says, he thinks that I countenanced the setting of it up, because it was done by bishop Owen. But Mr. Bromfeild, who did that work, gave testimony to the Lords, that I had nothing to do in it. He says, there was an Image set up at Carfax church, but pulled down again by Mr. Widdows, vicar there. But this hath no relation at all to me. 'This Picture of the Blessed Virgin was twice mentioned before: and sir Nath. Brent could say nothing to it but hearsay. And Mr. Corbett did not so much as hear of any abuse. And now alderman Nixon says, he saw hats put off; but the wise man knows not to what. Nor is there any shew of proof offered, that I had any hand or approbation in the setting of it up; or that ever any complaint was made to me of any abuse to it, or dislike of it. And yet Mr. Browne, when he gave the sum of the charge against me, insisted upon this also, as some great fault of mine, which I cannot yet see.'

III. In the next Charge, Mr. Serjeant is gone back again to Whitehall, as in the former to Oxford. The Witnesses are Mrs. Charnock and her daughter. They say, they went, being at court, into the Chapel, and it seems a woman with them, that was a papist; and that while they were there, Dr. Brown, one of the king's chaplains, came in, bowed towards the Communion-Table, and then at the Altar kneeled down to his prayers. I do not know of any fault Dr. Brown committed, either in doing reverence to God, or praying there. And yet if he had committed any fault, I hope I shall not answer for him. I was not then Dean of the Chapel, nor did any ever complain to me. They say, that two strangers came into the chapel at the same time, and saw what Dr. Brown did, and said thereupon, "That sure we did not differ much, and should be of one religion shortly." And that the woman which was with these witnesses, told them they were priests. First, This can no way relate to me; for neither did these women complain to me of it, nor any from them. Secondly, If these two men were priests, and did say as is testified, are we ever a whit the nearer them in religion? Indeed, if all the difference between Rome and us consisted in outward reverence, and no points of doctrine, some argument might hence be drawn; but the points of Doctrine being so many and great, put stop enough to that. Thirdly, If Recusants, Priests especially, did so speak, might it not be said in cunning, to discountenance all external worship in the service of God, that so they may have opportunity to make more proselytes? And it is no small advantage, to my knowledge, which they have this way made. 'And this was the answer which I gave Mr. Browne, when he charged this upon me in the house of commons.'

Here, before they went any farther, Mr. Serjeant Wilde told the Lords, That when sir Nath. Brent was employed in my Visitation, he had Instructions for particular churches, of which some were tacit Intimations, and some express. I know not to what end this was spoken; for no coherent Charge followed upon it. But sure he thinks sir Nath. Brent very skilful in me, that he can understand my tacit intimations, and know to what particular church to apply them. 'And as I said no more at the bar, so neither did I think to say any more after; yet now I cannot but a little hemoan myself. For ever since Mr. Maynard left off, who pleaded, though strongly, yet fairly, against me; I have been in very ill condition between the other two. For, from Mr. Nicolas I had some sense, but extreme virulent and foul language: and from serj. Wilde language good enough sometimes, but little or no sense. For let me answer what I would, when he came to reply, he repeated the charge again, as if I had made no answer at all: or as if all that I expressed never so plainly, had been but tacit intimations; which I think he understood as much as sir Nath. Brent.'

IV. In the Fourth Charge, he told the lords he would not trouble them with repeating the Evidence, but only put them in mind of some things in the Case of Ferdinando Adams of Ipswich; of the men of Lewes suffering in the High Commission; of the parishioners of Beckington, and some others heard before, but would leave the Lords to their memory and their Notes: yet read over their Sentences given in the High Commission, and made a repetition of whatsoever might but make a shew to render me odious to the people. 'And this hath been their art all along, to run over the same thing twice and again, as they did here in the second Charge about the Picture of the Blessed Virgin, to the end that, as the auditors changed, the more of them might hear it; and that which wrought not upon some, might upon others. In all which I patiently referred myself to my former Answers, having no other way to help myself; in regard they pretended that they renewed the same Instances, but not the same way; but in one place, as against Law; and in another, as against Religion. But why then did they not, in both places, run over all circumstances applicable to both?' And on they went too with the men of Lewes; where,

1. One Mr. Parnlye, they say, was censured cruelly in the High Commission, for not removing the Communion-Table. The business was but this: sir Nath. Brent, and his own Ordinary Dr. Nevill, ordered the remove of the Table; he would not. For this contumacy he was censured, but enjoined only to make his Submission to Dr. Nevill. Which, I think, was a Sentence far from any barbarous cruelty, as it is called.

2. Another Instance, and the next, was Mr. Burket. He says, he was censured also about

removing the Communion-Table, and for that only. But first, this was not simply for removing the Holy Table; but it was for abetting the Church-wardens to remove it back again from the place, where lawful authority had set it. And secondly, whereas he says, he was censured for this only, the very charge itself confutes him. For there it is said, that this, about removing the Communion-Table, appears in the sixth Article that was against him. Therefore there were five other Articles at least more against him: and therefore not this only.

3. The third Instance was Mr. Chancery: And he likewise is said to have suffered very much only about railing in of the Communion-Table. But this is not so neither: For he confesses that he spake reproachful words against Authority, and in contempt of his Ordinary; that he said the rails were fit to be set up in his garden; that he came 50 miles from his own church, on purpose to countenance this business: and all this he acknowledges upon his oath in his Submission. And yet nothing laid upon him but Suspension; and that no longer than till he submitted. And all this the act of the High-Commission, not mine. 'And so I answered Mr. Browne, who urged this against me also.' And the truth of all this appears *apud Acta*; though they were taken away, and kept ever since from my use, yet many things done in that court have been charged against me. And here stepped in a testimony of Mr. Genebrad's that I threatened openly in the High-Commission to suspend Dr. Merrick. And why might I not do it, if he will be overbold with the proceeding of the whole court? I have known ere now a very good lawyer committed from the Chancery-Bar to the Fleet, though I shall spare names.

4. The fourth Instance was in Mr. Workman's Case; charged as if he were sentenced only for preaching a Sermon to the Judges against Images in Churches. (1.) The first Witness in the Cause was Mr. Langly. He says, Mr. Workman was censured for this Sermon, and other things. Therefore not for this Sermon only: The High-Commissioners were no such patrons of Images. He says, That when I was dean of Gloucester, I told them in the Chapel, that king James had heard of many things amiss in that church, and required me to take care of them. It is true, he did so. He says farther, that hereupon I placed the Communion-Table Altar-wise, and commanded due reverence at the coming into the Church. This I did, and I have given my reason often already for it out of the Injunctions of queen Elizabeth. He says, that bishop Smith took offence at this, and would come no more to the Cathedral. First, my Lords, this gentleman was then school-master there, and had free access unto me: He never discovered this. Secondly, the Bishop himself never said a word to me about it. If he had, I would either have satisfied his lordship in that, or any thing else that I did; or if he had satisfied me, I would

have forborn it. He says, That Mr. Workman, after he was put from his lecture, was not suffered to teach children. First, If he had been suffered, this man had been like to make the first complaint for decay of his own school. But, Secondly, the Commission thought it no way fit to trust him with the education of children, who had been factious among men; especially not in that place, where he had so shewed himself. 'And this Answer I gave to Mr. Browne; who, in summing up the Evidence, stood as much, and inveighed as earnestly against this cruel proceeding with Mr. Workman, as upon any one thing in the Charge. At which time he added also, that he would not be suffered to practise physic to get his living. But, First, no Witness evidenceth this, that he was denied to practise physic. And, Secondly, he might have taught a school, or practised physic, any where else. But he had done so much harm, and made such a faction in Gloucester, as that the High-Commission thought it not fit to continue him there: And he was not willing to go from thence, where he had made his party.' He says farther, That some few of the citizens of Gloucester were called into the High-Commission, for an annuity of 20*l.* a year allowed Mr. Workman out of the town-stock. For the thing itself, it was a gross abuse and scorn put upon that court: that when they had censured a Schismatical Lecturer (for such he was there proved), the townsmen should make him an allowance of 20*l.* a year: A thing, as I humbly conceive, not fit to be endured in any settled government. And whereas clamour is made, that some few of the citizens were called to an account for it, that is as strange on the other side: For where there are many offenders, the noise would be too great to call all. And yet here is noise enough made for calling a few. Here it was replied by Mr. Maynard, That this was done by that Corporation, and yet a few singled out to answer; and that therefore I might be singled out to answer for things done in the High Commission. 'But, under favour, this learned and worthy gentleman is mistaken: For here the mayor and magistrates of Gloucester did that which was no way warrantable by their charter, in which case they may be accountable, all or some. But in the High-Commission we meddled with no cause not cognoscible there; or if by information we did, we were sure of a prohibition to stop us. And meddling with nothing but things proper to them, I conceive still no one man can be singled out to suffer for that which was done by all. And this may serve to answer Mr. Browne also, who in his last reply upon me, when I might not answer, made use of it.'

(2.) The second Witness was Mr. Pury of Gloucester. He says, That Mr. Brewster, and Mr. Guies the town-clerk, were called to the Council-Table about this annuity: and that I desired it might be further examined at the High-Commission. If this were true, I know

no offence in it, to desire that such an affront to government might be more thoroughly examined, than the Lords had leisure to do. But the witness doth not give this in evidence: For he says no more, than that he heard so from Mr. Brewster. And his hear-say is no conviction. He says farther, That the High-Commission called upon this business of the Annuity, as informed that the 20*l.* given to Mr. Workman was taken out of the monies for the poor. And this I must still think was a good and a sufficient ground justly to call them in question. He says also, that these men were fined, because that which they did was against authority. So by their own witness it appears, that they were not fined simply for allowing means to Mr. Workman, but for doing it in opposition to authority. Lastly, he says, they were fined 10*l.* a-piece; and that presently taken off again. So here was no such great persecution, as is made in the cause. And for the cancelling of this deed of annuity, it was done by themselves, as Mr. Langly witnesses.

After these two Witnesses heard, the Sentence of the High-Commission Court was read, which I could not have come at, had not they produced it. And by that it appeared evidently, that Mr. Workman was censured as well for other things, as for his Sermon about Images in churches. As first he said, So many Paces in Dancing were so many to hell. This was hard, if he meant the measures in the Inns of Court at Christmas; and he excepted none. Then he said, and was no way able to prove it, That Drunkards, so they were conformable, were preferred. Which was a great and a notorious slander upon the governors of the Church, and upon orderly and conformable men. Then he said, That Election of Ministers was in the people. And this is directly against the laws of England, in the right of all patrons. Then constantly, in his Prayer before his Sermon, he prayed for the States and the king of Sweden before his majesty, which was the garb of that time among that party of men. Then, that one of his common themes of preaching to the people, was against the government of the Church. And then, that Images in churches were no better than stews in the Commonwealth; which at the best is a very unsavoury comparison. But here it was replied, That Images were Idols, and so called in the Homilies [Hom. against the peril of Idolatry, p. 3, p. 92.]; and that therefore the comparison might hold. Yea, but in the second Homily against the peril of Idolatry, images or pictures in glass or hangings are expressly and truly said not to be idols, till they be worshipped. And therefore Mr. Workman should not have compared their setting up, to stews, till he could have proved them worshipped. And in all this, were the act good or bad in the censuring of him, it was the act of the High-Commission, not mine.

V. After this followed the fifth Charge; which was Mr. Sherfield's Case, his Sentence

in the Star-Chamber for defacing of a Church-Window in or near Salisbury.\* The witnesses produced were two.

1. The first was Mr. Carill. He said that Mr. Sherfield defaced this Window because there was an Image in it, conceived to be the Picture of God the Father. But first, this comes not home: For many a picture may be conceived to be of God the Father, which yet is not, nor was ever made for it. And then suppose it were so, yet Mr. Sherfield in a settled government of a state, ought not to have done it but by command of authority. He says, That in my Speech there in the court, I justified the having of the Picture of God the Father, as he remembers, out of Dan. vii. 22. This "as he remembers" came well in: For I never justified the making or having that picture. 'For Calvin's Rule, [Calv. 1 Inst. c. 11. § 18.] that we picture that which may be seen, is grounded upon the negative, that no picture may be made of that which was never, never can be seen. And to ground this negative, is the command given by Moses, Deut. iv. 15 and 16. "Take good heed to yourselves." For what? That you make not to yourselves this picture. Why? "For that you saw no manner of similitude in the day that the Lord spake unto you out of the midst of the fire. Out of the midst of the fire; and yet he still reserved himself in thick darkness," Exod. xx. 21. So no picture of him, because no similitude ever seen. And this rule having ever possessed me wholly, I could not justify the having of it.' I said, indeed, that some men in later superstitious times were so foolish as to picture God the Father, by occasion of that place in Daniel: But for myself, I ever rejected it. Nor can that place bear any shew of it: For Daniel says there, "That the Ancient of Days came." But in what shape or similitude he came, no man living can tell. And he is called the "Ancient of Days," from his Eternity, not as if he appeared like an old man. The text hath no warrant at all for that.

2. Yet the second Witness, Mr. Tomlyns, says also, That I did justify this picture. 'God forgive him the malice or ignorance of this oath, be it which it will!' He might have been as wary as Mr. Carill, and added "as he remembers." For so many years since, as this Hearing was, he may easily mistake. But if I did say any such thing, why are not my own Papers here produced against me? I had that written which I then spake, and the Paper was in my Study with the rest, and came, (for aught I know) into their hands which follow the Charge against me. I ask again, why is not this Paper produced? Out of all doubt it would, had there appeared any such thing in it. He says also, That I said then, that if the Idol of Jupiter were set up, yet it were not lawful to pull it down in a popular tumult, but by order and authority. I did say so, or to that effect,

\* See No. 141, vol. 3, p. 512.

indeed; and must say it still. For I find in St. Augustine almost the very words. And bishop Davenant, a man very learned, cites this place of St. Augustine, and approves it. And they both prove this doctrine from Deut. vii. 5. & xii. 2, where the command given for destroying of the Idols when they came into the Land of Canaan, was not left at large to the people, but settled in Moses the chief magistrate, and his power. And according to this rule, the temple of Æsculapius, though then grown very scandalous, was not pulled down but by Constantine's command. [Euseb. 3. de vita Constantin. c. 54.] Which place I then shewed the Lords. But this witness added, That Mr. Sherfield had authority to do this from the vestry. If he had, that is as good as none; for by the laws of England there is yet no power given them for that, or any thing else. And all that vestries do, is by usurpation, or consent of the parish, but reaches not this. The Bishop of the diocess had been fitter to be consulted herein than the vestry.

Here, as if these Witnesses had not said enough, Mr. Nicolas offered himself to be a Witness; and told the Lords he was present at the hearing of this Cause; and that four Witnesses came in clear, that the Picture broken down was the Picture of God the Father; and that yet the Sentence of the Court passed against Mr. Sherfield. First, if this be so, it concludes against the Sentence given in the Star-Chamber, not against me: And he calls it here the "Sentence of the Court." Secondly, be it that it were undoubtedly the picture of God the Father; yet he ought to have taken authority along with him, and not to go about it with violence; which he did, and fell, and brake his leg in the business. Thirdly, By his own description of the Picture, it seems to me to be some old fabulous picture out of a legend, and not one of God the Father: For he then told the Lords, it was the picture of an old man with a budget by his side, out of which he was plucking Adam and Eve. 'And I believe no man ever saw God the Father so pictured any where. Lastly, Let me observe how Mr. Nicolas takes all parts upon him wherein he may hope to do me mischief.'

VI. The sixth Charge was concerning a Bible that was printed with Pictures, and sold. The Witness was Mr. Walsal a Stationer; who says, That this Bible was licensed by Dr. Weeks, my lord of London's chaplain, not mine: so thus far it concerns not me. 'Yes,' says Mr. Browne in his last Reply; for it appears in a List of my Chaplains, under my own hand, that Dr. Weeks was one. It is true, when I was bishop of Bath and Wells, he was mine; but my lord of London had him from me, so soon as ever he was bishop; and was his, not mine, when he licensed that book. And Mr. Browne knew that I answered it thus 'to the lords.' He says, That I gave him direction that they should not be sold openly upon the stalls, but only to discreet men that

knew how to use them. The case was this: As I was at prayers in the King's Chapel, I there saw one of them in Mrs. Kirk's hand. She was far enough from any affection to Rome. And this being the first knowledge I had of it, many were vended and sold before I could prevent it. Upon this I sent for one, (whether to this Witness or another, I cannot say) and acquainted the Lords of the Council with it, and craved their direction what should be done. It was there ordered, that I should forbid the open sale of them upon their stalls, but not otherwise to learned and discreet men. And when I would have had this Order stricter, no man stuck to me but Mr. Secretary Cook. So according to this Order I gave direction to Mr. Walsal, as he witnesses.

Here Mr. Maynard replied, That I ought to have withstood this Order, in regard it was every way faulty. For, said he, either these Pictures were good or bad. And if they were good, why should they not be sold openly upon the stalls to all that would buy? And if they were bad, why should they be sold privately to any? 'To this Reply I was not suffered to answer. But when I heard Mr. Browne charge this Bible with pictures against me, then I answered the thing as before, and took occasion thereby to answer this dilemma thus; namely, That this kind of argument concludes not but in things necessary, and where no medium can be given. For where a medium can be given, the horns of this argument are too weak to hurt; and so it is here. For Pictures in themselves are things indifferent; not simply good, nor simply bad, but as they are used. And therefore they were not to be sold to all comers, because they may be abused, and become evil; and yet might be sold to learned and discreet men, who might turn them to good. And that Images are things indifferent of themselves, is granted in the Homilies, which are against the very peril of idolatry.' [Hom. par. 1, p. 11.] He said, There were some inconvenient Pictures among them, as the Assumption and the Dove. Be it so; the Book was not licensed by me nor mine: And yet, as I then shewed the Lords, they were not so strict at Amsterdam against these pictures; for the book which Mr. Walsal shewed me, was printed and sent thence, before it was printed here. Besides, our old English Bibles in the beginning of the Queen were full of pictures, and no fault found. As for that which was added at the bar, That one of these Bibles was found in secretary Windebank's trunk, and another in sir John Lambes; that is nothing to me.

VII. The last Charge of this day was, That something about Images was expunged out of Dr. Featly's Sermons by my chaplain, Dr. Bray, before they could be suffered to be printed. But, first, he himself confesses, That I told him he might print them, so nothing were in them contrary to the doctrine and discipline of the Church of England. Secondly,

he confesses, That when Dr. Bray made stay of them, he never complained to me; and I cannot remedy that which I do not know. Thirdly, He confesses, That all the time he was in Lambeth-House, my predecessor ever left that care of the press upon his chaplains; and why I might not do it as well as my predecessor, I do not yet know. But he said, That he complained to sir Edmund Scott, and desired to be advised by him what he should do; and that he answered, He thought I would not meddle with that troublesome business, more than my predecessors had done. 'Be this so, yet sir Edmund Scott never told me this; nor is there any the least proof offered that he did. But because this and the like passages about expunging some things out of Books, makes such a great noise, as if nothing concerning popery might be printed; and because Mr. Browne, in summing up of the charge in the house of commons, warmly insisted upon this particular; I thought it necessary to answer as follows: That what moved my chaplain to expunge that large Passage against images, I know not; nor could I now know, my chaplain being dead. But that this I was sure of, that elsewhere in those very Sermons there was as plain a passage, and full against images, left in. [Dr. Featly's Sermons, p. 447.] And in another place a whole leaf together spent to prove them idolaters (p. 791); and that as gross as the Baelists, and so he terms them. Yea, and that the Pope is Antichrist too (p. 308); and not only called so, but proved by divers arguments: and not so only, but in plain terms, that he is the Whore of Babylon (p. 810). And these Passages I then read out of the Book itself in the house of commons: and many other like to these there are. So my Chaplain might see good cause to leave out some passages, where so many upon as good cause were left in.'

But to the business of leaving the care of these Books, and the overview of them to my Chaplain, it was then urged, 'That the Commissary of John lord archbishop of York had excommunicated the lord bishop of Durham, being then in the king's service: and that the Archbishop himself was deeply fined for this act of his Commissary; and that therefore I ought much more to be answerable for my chaplain's act, whom I might put away when I would, than he for his commissary, who had a patent, and could not be put out at pleasure\*.' Mr. Browne also followed this precedent close upon me. But first, there is a great deal of difference in the thing itself: my chaplain's case being but the leaving out of a Passage in a Book to be printed; but his Commissary's Case being the Excommunicating of a great Bishop, and he in the king's service,

\* This was done long before the Reformation; when the Patents of Chancellors and Commissaries were revocable at the pleasure of the bishop. H. W.

of whose honour the laws of this realm are very tender. And, secondly, the Bishop and his Official (call him Chancellor or Commissary, or what you will) make but one person in law; and therefore the act of the Commissary, to the full extent of his patent, is the act of the Bishop in legal construction, and the Bishop may be answerable for it. But the Bishop and his Chaplain are not one person in any construction of law. 'And say he may put away his chaplain when he will, yet that cannot help what is past, if aught have been done amiss by him. And this was the answer I insisted on to Mr. Browne.'

Upon my entrance on this Day's Defence, I found myself aggrieved at the Diurnal, and another Pamphlet of the week, wherein they print whatsoever is charged against me, as if it were fully proved; never so much as mentioning what or how I answered. And that it troubled me the more, because, as I conceived, the Passages, as there expressed, trenched deep upon the justice and proceedings of that Honourable House; and could have no aim but to incense the multitude against me. With some difficulty I got these Pamphlets received; but there they died, and the weekly abuse of me continued to keep my patience in breath.

#### *The Thirteenth Day of my Hearing.*

1. Whitson-Tuesday, June 11, 1644. The first Charge of this Day, was the Opinion which was held of me beyond the seas. The first Witness was sir Henry Mildmay, who, as is before related, told me without asking, That I was the most hateful man at Rome, that ever sat in my See since the Reformation. 'Now he denied not this, but being helped on by good preparation, a flexible conscience, and a fair leading interrogatory by Mr. Nicolas,' (Mr. Serjeant Wilde was sick, and came no more till the last day, when I made my Recapitulation) he minced it. And now he says, That there were two Factions at Rome, and that one of them did indeed speak very ill of me, because they thought I aimed at too great a power here in England: but the other Faction spake as well of me, because they thought I endeavoured to bring us in England nearer to the church of Rome. But first, my Lords, this gentleman's words to me were round and general; That I was hated at Rome, not of a party or faction there; and my servants heard him at the same time, and are here ready to witness it, That he then said the Pope was a goodly gentleman, and did use to ride two or three great horses in a morning; and, but that he was something taller, he was as like auditor Philips, who was then at dinner with me, as could be. But I pray mark what wise men he makes them at Rome. One Faction hates me, because I aim at too much power; and the other loves me, because I would draw England nearer Rome. Why, if I went about to draw England nearer Rome, can any among them be such fools as to think my power too great? For if I used my power for them, why should

any there condemn me? And if I used it against them, why should any here accuse me? *Non sunt hæc bene divisa temporibus*: These things suit not with the times, or the dispositions of Rome: But the plain truth is, I do not think that ever he was at Rome; I after heard a whisper, that he only stepped into France for another cure, not to Rome for curiosity, which was the only cause he gave the lords of his going thither.\*

2. The second Witness was Mr. Challoner. He says not much of his own knowledge, but of Fame, the tattling gossip; yet he told the Lords, I was a very obscure man, till within these 15 years. Be it so, if he please; yet I have been a bishop above 23 years: and it is 18 years since I was first Dean of his majesty's Chapel-Royal. He says, That after this time there was a strong opinion of reconciliation to Rome. A strong opinion, but a weak proof: for it was an opinion of enemies, and such as could easily believe what they over-much desired. He further said, That some of them were of opinion, that I was a good Roman Catholic; and that I wrought cunningly to introduce that Religion by inches; and that they prayed for me. First, my Lords, the opinion of enemies is no proof at all, that I am such as they think me. And secondly, this is a notable and no unusual piece of cunning, for an enemy to destroy by commending; for this was the ready way; and I doubt not but it hath been practised, to raise a jealousy against me at home, thereby either to work the ruin of my person, or utterly to weaken and disable me from doing harm to them, or good for the church of England. Besides, if the commendation of enemies may in this kind go for proof, it shall be in the power of two or three practising Jesuits, to destroy any bishop or other church-man of England, when they please. At last he told a story of one father John, a Benedictine; that he asked him how Church-Livings were disposed in England, and whether I had not the disposing of those which were in the king's gift? And concluded, That he was not out of hope to see England reduced to Rome. Why, my Lords, this is not father John's hope alone; for there is no Roman Catholic\* but hath some hope alive in him to see this day. And were it not for that hope, there would not have been so many, some desperate, all dangerous practices upon this kingdom to effect it, both in queen Elizabeth's time, and since. But if this I know not what father John hope so, what is that to me?

3. The third Witness was Mr. Anthony Mildmay; a man not thought on for a witness, till I called for his brother sir Henry. But now he comes laden with his brother's language. He says just as sir Henry did before,

\* The Archbishop calls the English Papists Roman Catholics; not as allowing them to be such, but referring to that name, which some of them were before said to have affixed to him. H. W.

That there were two Factions at Rome, the Jesuits, and they abhorred me; but the other, the secular Priests, they wished me well, as he was informed. First, This is so one and the same testimony, that any man that will, may see, that either he informed his brother, or his brother him. Secondly, Here is nothing affirmed, for it is but as he was informed: And he doth not tell you by whom. It may be, my Lords, it was by his brother. Then he says, This was to make myself great; and tells a tale of Father Fitton, as much to the purpose as that which Mr. Challoner told of Father John. But whatsoever either of these Fathers said, it was but their own opinion of me, or hearsay; neither of which can prove me guilty of any thing. Thus much Mr. Anthony made a shift to say by 5 of the clock at afternoon, when I came to make my Answer. And this, as I have sufficient cause to think, only to help to shoar up his brother's testimony. But in the morning, when he should have come, as his brother did, he was by 9 in the morning so drunk that he was not able to come to the bar, nor to speak common sense, had he been brought thither: *Nobile par fratrum*.\*

II. The second Charge was the Consecration of two Churches in London; St. Catharine Cree-Church, and St. Giles in the fields. The witnesses two.

1. The first Witness was one Mr. Willingham. And he says, That I came to these churches in a pompous manner: But all the pomp that he mentions, is, that sir Henry Martin, Dr. Duck, and some other of the Archbishops, attended me, as they usually do their diocessans in such solemnities. He says, he did curiously observe what was done, thinking it would one day be called to an account, as now it is. So this man (himself being judge) looked upon that work with a malevolent eye, and God preserve him from being a malicious witness! He says, that at my approach to the Church-door was read, "Lift up your heads, O ye Gates, and be ye lift up, ye everlasting Doors, and the King of Glory shall come in," Psal. xxiv. 7. And this was urged over and over, as a jeer upon my person. But this place of Scripture hath been antiently used in Consecrations: and it relates not to the Bishop, but to God Almighty, the true King of Glory, who, at the dedication, enters by his servant to take possession of the house, then to be made his. He says, that I kneeled down at my coming in, and after used many bowings and cringings. For my kneeling down at my entrance, to begin with prayer, and after to proceed with reverence, I did but my duty in that; let him scoffingly call it Cringing, or Ducking, or what he please.

He says farther, That at the beginning I took up dust, and threw it in the air, and after used divers curses. And here Mr. Prynne put Mr. Nicolas in mind to add, that *spargere cinerem* is in the form of Consecration used in

the Pontifical. 'And Mr. Browne, in his summary Account of my Charge, laid the very Consecration of these Churches as a crime upon me, and insisted on this particular.' But here my Answer to all was the same; That this Witness had need look well to his oath, for there was no throwing up of dust, no curses used throughout the whole action: nor did I follow the Pontifical, but a copy of learned and reverend bishop Andrews, by which he consecrated divers churches in his time; and that this is so, I have the copy by me to witness, and offered them to shew it. Nor can this how-ever savour any way of Treason. No, said Mr. Browne; but the Treason is, to seek, by these Ceremonies, to overthrow the Religion established. Nor was that ever sought by me: and God of his mercy preserve the true Protestant Religion amongst us, till the Consecration of Churches, and Reverence in the Church, can overthrow it; and then I doubt not, but, by God's blessing, it shall continue safe to the world's end.

He says also, that I did pronounce the Place Holy. I did so: and that it was in the solemn act itself of the Consecration, according to the usual form in that behalf. And no man will deny, but that there is a derivative and a relative holiness in places, as well as in vessels, and other things dedicated to the honour and service of God. Nor is any thing more common in the Old Testament; and it is express in the New, both for place and things: 1 Cor. ix. 13. [*Objectiva et ad hærens, Jo. Prideaux, Concio in S. Luc. xix. 46.*]

Then it was urged at the bar, that a Prayer which I used, was like one that is in the Pontifical. So in the Missal are many Prayers like to the Collects used in our English Liturgy, so like, that some are the very same, translated only into English; and yet these confirmed by law. And for that of Psal. xcvi. 6. *Venite, prociadamus*, &c. then also excepted against, that hath been of very antient use in the liturgies of the church. From which *rejecimus paleam, numquid et grana?* We have separated the chaff, shall we cast away the corn too? If it come to that, let us take heed we fall not upon the devil's winnowing, who labours to beat down the corn; it is not the chaff that troubles him, St. Luke xxii. 31. Then they urged my predecessor archbishop Parker, [In *Antiq. Britannicis*, p. 85.] that he found fault with the Consecration of new churches. I answered then upon memory, that he did not find fault simply with Consecrations of Churches, but only with the superstitious Ceremonies used therein. 'And this since, upon perusal of the place, I find to be true. For after he had in some sort commended the Popes for taking away some gross and superstitious purgations, he adds, that yet, for want of piety or prudence, their later Pontifical and Missal-books did outgo the antient in *multitudine ceremoniarum, et peragendi difficultate et tedio, et exorcisationis amentia*. So these were the things he found fault with, not the conse-

cration itself; which he could not well do, himself being then a consecrated bishop.'

2. The second Witness was Mr. Hope. He says, 'That he agrees with the former witness, and saw all, and the throwing up of the Dust, &c. Since he agrees with the former witness, I give him the same Answer. Yet with this observation upon him and his oath: the former Witness says, that at the beginning of this action, I took dust and threw it up; this man agrees with him, and saw all; and almost in the very next words confesses, he was not there at the beginning. Not there; yet he saw it. My Lords, if you mark it, this is a wholesome oath. He says, that then the church-yard was consecrated by itself. It was ever so; the one act must follow the other, though both done the same day: for the places being different, the act could not pass upon them at the same time. Then he said, there were fees required, and a good eye had to the money. This is a poor objection against me: if the officers did exact any money without rule, or beyond precedent, let them answer for it. But for that which was said to belong to me, I presently gave it to the poor of the parish: and this Mr. Dell my Secretary, then present, attested to the lords. Lastly he said, they were not new churches; let him look to his oath again; for it is notoriously known, they were both new built from the ground, and St. Giles not wholly upon the old foundation.

III. The third Charge was laid on me only by Mr. Nicolas, and without any witness. It was, That I out-went Popery itself; for the Papists consecrated churches only, but I had been so ceremonious, that I had consecrated chapels\* too. My lords, the use of Chapels and of churches, in regard of God's Service, is the same. Therefore if Consecration be fit for the one, it must needs be for the other. And the Consecration of Chapels was long before Popery came into the world. For even Oratories newly built were consecrated in or before Eusebius's time: and he flourished about the year of Christ 310. [Euseb. l. 10. Hist. c. 3.] So antient they are in the course of Christianity; and for any prohibition of them, there is neither law nor canon in the state or Church of England that doth it.

The Chapels they instance in are three. First, they say I consecrated a Chapel of the right hon. the Lord Treasurer Weston's. I did so, and did no harm therein. As for the touch given by the way upon that honourable person, he is gone to God, I have nothing to do with it. Secondly, they instanced in a chapel of sir John Worstenham's building. It is true, I consecrated that too; but that was a parish-

\* Here in England, both before and since the Reformation, Chapels newly erected were always solemnly consecrated, as well as churches. I could produce innumerable instances of the time preceding, many of the time succeeding the Reformation. II. W.

church, built in the place where he was born, and it was in my diocese, and so the work proper for me. The third instance was in my own chapel, in my house at Aberguilly, when I was bishop of St. David's; the room lay waste and out of repair, and I fitted it at my own cost, and consecrated it into a chapel, that house having no oratory before. Here they farther aggravated many circumstances; as first, That I named it at the Dedication, "The Chapel of St. John the Baptist." I did so name that Chapel, in memory of the College where I was bred, which bears the same name; but I dedicated it to God and his service. And to give the names of Angels and Saints to churches, for distinction-sake, and for the honour of their memory, is very antient and usual in the Church, as appears in St. Augustine, and divers others of the Fathers; [Tho. 2. 2<sup>e</sup> q. 85 A. 2 ad 3.] but dedicated only to God: 'Which in the midst of superstitious times, the school 'itself confesses.' So yet no offence. Secondly, That I did it upon the 29th of August. And why might I not do it that day, as well as upon any other? But resolving to name the Chapel as I did, I the rather made choice of that day, both because it was the Day of the Decollation of St. John the Baptist, and because as upon that day God had wonderfully blessed me, in the hearing of my Cause concerning the Presidentship of St. John's College in Oxford, by king James of ever-blessed memory: so yet no offence. Thirdly, There was a Paper read, and avowed to be mine, in which was a fair description of Chapel-furniture and rich Plate, and the ceremonies in use in that chapel, and Wafers for the communion. At the reading of this Paper I was a little troubled. I knew I was not then so rich, as to have such Plate or Furniture; and therefore I humbly desired sight of the paper. So soon as I saw it, I found there was nothing in it in my hand but the indorsement, which told the reader plainly, that it was the model of the reverend bishop Andrews's Chapel, with the furniture, plate, ceremonies therein used, and all things else. And this Copy was sent me by the household chaplain to that famous bishop. 'This I laid open to the Lords, and it would have made any man ashamed, but Mr. Prynne, who had delivered upon oath, that it was a Paper of my Chapel-Furniture at Aberguilly, contrary to his conscience, and his own eyesight of the paper.' And for Wafers, I never either gave or received the communion, but in ordinary bread. At Westminster I knew it was sometimes used, but as a thing indifferent. As for the slur here given to that reverend dead bishop of Winchester, it might well have been spared; he deserved far better usage for his service to the Church of England, and the protestant cause.

IV. The Fourth Charge was the publishing the Book of Recreations: and it was ushered in with this scorn upon me, That I laboured to put a badge of Holiness, by my breath, upon

places: and to take it away from days. But I did neither; the king commanded the printing of it, as is therein attested, and the warrant which the king gave me, they have. And though at consecrations I read the prayers, yet it was God's blessing, not my breath, that gave the holiness. And for the day, I ever laboured it might be kept holy, but yet free from a superstitious holiness. And first it was said, That this was done of purpose to take away Preaching. But first, there is no proof offered for this. And secondly, it is impossible; for till the Afternoon-Service and Sermon were done, no Recreation is allowed by that Book, nor then to any but such as have been at both: therefore it could not be done to take it away. Thirdly, the Book names none but *Lawful Recreations*; therefore if any unlawful be used, the Book gives them no warrant. And that some are lawful (after the public service of God is ended) appears by the practice of Geneva, where after Evening-Prayer, the elder men bow, and the younger train. And Calvin says in express terms, 'That one cause of the institution of the Sabbath was,\* That Servants might have a day of rest and remission from their labour. And what time of the day fit, if not after Evening-Prayer? And what rest is there for able young men, if they may use no recreation? Then it was urged, That there was a great riot and disorder at Wakes kept on the Lord's-Day. That is a very sufficient cause to regulate and order those feasts, but not quite to take them away. I make no doubt, for my part, but that the Feast of the Dedication was abused by some among the Jews: and yet Christ was so far from taking it away for that, as that he honoured it with his own presence: St. John x. 22. As for the Paper which was read, containing three causes why that Book was published, that was a Note taken for my own private use and memory.

Then came in Mr. Prynne, who said, That the Lord Chief Justice Richardson had made an Order in his circuit against these Wakes, and was forced to revoke it. This was done by authority, as is before answered; to which I refer myself. Here it is added, to help fill up the noise. But Mr. Prynne says, That all the gentlemen in the country petitioned on the Judge's behalf. No; there was a great faction in Somersetshire at that time, and sir Robert Phillips and all his party writ up against the Judge and the Order he made, as was apparent by the certificates which he returned. And sir Robert was well known in his time to be neither Popish nor profane. He says farther, That William then earl of Pembroke was out of town, and the Book printed in the interim by my procurement. But for this last, here is not one word of proof offered, and so I leave it.

\* Tertio, Servis et iis qui sub aliorum degerent imperio, quietis Diem indulgendum censuit, quo aliquam haberent a labore remissionem. Calv. L. 2. Inst. c. 8. § 28.

V. The Fifth Charge was, That some ministers were punished for not reading this Book. Witnesses for this were produced.

1. The first was sir *Nath. Brent*; who says, He had charge from me to call for an account of not reading this Book, both in my province at my Visitation, and in my diocese. His majesty having commanded this, I could do little, if I had not so much as inquired what was done. And he confesses, That for my province he gave time to them which had not read it, and then never asked more after it. So here was no eager prosecution. But then he says, that three in my diocese stood out, and asked time; and confesses that I granted it; but adds, that when he asked more time for them, I denied; and that they were then suspended *ab officio* only. I thought I had reason to deny, when I saw they did but daily by asking time. And it was then evident, that in the diocese of other bishops far more than three were punished, and their punishment greater. 'How-  
'ever, this my proceeding was far from rigour. And this was the Answer that I gave Mr. *Browne*, who in the sum of his charge instanced in this particular against me.'

2. The second Witness was Mr. *Culmer*, one of the three ministers that was suspended. He says, That he was suspended by sir Nath. Brent, and that when he came to me about it, I said, "If you know not how to obey, I know not how to grant your Petition." Truly, my lords, finding him both wilful and ignorant, I cannot tell what I could say less. He says, that his patron took away his benefice. Why, my lords, he had none: he was only a curate, and, God knows, unfit for that. So being suspended from his office, this must needs be done. He says, he was not absolved till the Scots came in, and that he was conformable in all things else. For the time of his absolution, I leave that to the record: but for his conformity in other things, it is more than ever I heard of any.\* "This I can say for him, he is good at purchasing a benefice; for he offered a servant of mine 150*l.*, so he could procure me but to name him to the parliament for *Chartham* in Kent. Since, I have heard he is as good at doing Reverence in the Church: for he pished in the body of the Cathedral at *Canterbury* at noon-day, as will be justified by oath. And for this very particular, the Book of Recreations, he informed at the Council-Table against a gentleman of quality, for saying, "It was unfit such Books should be sent, for ministers to read in the Church." And was himself laid by the heels, for the falshood of this Information. So he is very good at the point of conscience too, that can refuse to read the Book, as being unfit, and

\* This Mr. Culmer not only pished in the Church of *Canterbury*, but also demolished the noble Glass-Windows of it with his own hands. The like he did in the Parish-Church of *Minster* in *Thanet*; which benefice he usurped during the Rebellion.

'complain to have another punished for saying 'it is so.' [*Antidotum Culmerianum*, p. 11. *Ibid*, p. 35.]

3. The third Witness is Mr. *Wilson*. He says, that I sent to sir Nath. Brent to suspend him. That is true; but it was when he would neither obey, nor keep in his tongue. He says, his Living was sequestered for almost four years. But it was not for not reading this Book. For himself confesses it was done in the High-Commission; and that for dilapidations, in not repairing his house.

4. The fourth Witness was one Mr. *Snelling*, a minister in the diocese of *Rochester*. All that was done against this man, was openly in the High-Commission Court: and there he was censured for other things, as well as for this. Himself confesses his open refusing to bow at the Name of Jesus, though the Canon of the Church command it. I kept him off from being sentenced a long time, and when he was sentenced, he confesses I was not present. He says, somewhat was expunged out of his brief. If it were, it was with the consent of the Counsel; which in that court was ordinary. However, it cannot touch me: for those things were done at Informations, where I was not present. He says, that when I heard of the nature of his Defence, I said, "If any such Defence were put in, it should be burnt." This was upon just complaint of the Judge then present at Informations, affirming it was against all the course of that court. He says, there is no penalty mentioned in that Declaration. And I say, his obedience, and other mens, should have been the more free and cheerful. Well, I pray God keep us in the mean, in this business of the Sabbath, as well as in other things; that we run not into a Jewish superstition, while we seek to shun profaneness. This Calvin hath in the mean time assured me, "That those men who stand so strictly upon the morality of the Sabbath, do, by a gross and carnal sabbatization, three times out-go the superstition of the Jews." [*Crassa carnalique Sabbatismi Superstitione ter Judæos superant*. *Calv. 2. Inst. c. 8. § 34.*]

Here it was inferred, That there was a Combination for the doing of this in other dioceses. But no proof at all was offered. Then bishop Mountague's Articles and bishop Wren's were read, to shew that inquiry was made about the reading of this Book; and the bishop of London's Articles named, but not read. But if I were in this combination, why were not my Articles read? Because no such thing appears in them; and because my Articles gave so good content, that while the Convocation was sitting, Dr. Brown and Dr. Holdsworth came to me, and desired me to have my Book confirmed in Convocation, to be general for all bishops in future, it was so moderate, and according to law. But why then (say they) were other Articles thought on, and a Clause that none should pass without the approbation of the Archbishop? Why, other were thought on, because I could not in modesty press the confirmation of my

own, though solicited to it. And that Clause was added, till a standing Book for all dioceses might be perfected, that no Quære in the interim might be put to any, but such as were according to law.

VI. The sixth Charge was about reversing of a Decree in Chancery (as it is said) about houses in Dr. Walton's parish, given (as was said) to superstitious uses.

1. The first Witness was serjeant *Turner*. He says, He had a rule in the King's-Bench for a Prohibition in this Cause. But by reason of some defect, what, is not mentioned, he confesses he could not get his Prohibition. Here is nothing that reflects upon me. And if a Prohibition were moved for, that could not be personally to me, but to my judge in some Spiritual Court, where it seems this cause depended, to which the Decree in Chancery was directed. And indeed this act, which they call a Reversing, was the act and seal of sir Nath. Brent, my vicar-general: And if he violated the Lord Keeper's Decree, he must answer it. But the Instrument being then produced, it appeared concurrent in all things with the Decree. The words are, "*Juxta scopum Decreti hac in parte in curia cancellariæ factum, &c.*"

2. The second Witness was Mr. *Edwards*. And wherein he concurs with serjeant *Turner*, I gave him the same Answer. For that which he adds, That Dr. Walton did lett leases of these houses at an under value, and called none of the parishioners to it: If he did in this any thing contrary to justice, or the will of the donor, or the decree, he is living to answer for himself; me it concerns not. For his exception taken to my grant, of confirmation, I think he means, and to the words therein, *Omnia et omnimoda*, &c. it is the ancient style of such Grants for I know not how many hundred years; no syllable innovated or altered by me.

VII. Then followed the Charge of Mr. *Burton* and Mr. *Prynn*, about their Answer, and their not being suffered to put it into the Star-Chamber. Which though Mr. *Prynn* pressed at large before, yet here it must come again, to help to fill the world with clamour. Yet to that which shall but seem new, I shall answer. Two things are said: (1.) The one, that they were not suffered to put in their Defence *modo et forma*, as it was laid. There was an Order made openly in court to the Judges to expunge scandalous matter. And the two Chief Justices did order the expunging of all that which was expunged, be it more or less; as appears in the acts of that court. (2.) The other is, that I procured this expunging. The Proofs that I procured it, were these: First, Because Mr. *Cockshot* gave me account of the business from Mr. Attorney. I had reason to look after the business, the whole Church of England being scandalized in that Bill, as well as myself. But this is no proof that I either gave direction, or used any solicitation to the reverend Judges, to whom it was referred. Secondly, Because I gave the Lords thanks for it. It was openly in

Court: It was after the expunging was agreed unto. And what could I do less in such a cause of the Church, though I had not been personally concerned in it? Thirdly, Because I had a copy of their Answer found in my Study. I conceive it was not only fit but necessary for me to have one, the nature of the cause considered. But who interlined any passages in it with black-lead, I know not: For I ever used ink, and no black-lead all my life. These be strange proofs that I procured any thing.

Then Mr. *Prynn* added, That the justice and favour which was afforded Dr. *Leighton* was denied unto him. As far as I remember, it was for the putting in of his answer under his own hand. This, if so, was done by order of the Court; it was not my act.

VIII. The last Charge followed: And that was taken out of the Preface to my Speech in the Star-Chamber. The words are, "That one way of Government is not always either fit or safe, when the humours of the people are in a continual change, &c." From whence they inferred, I laboured to reduce all to an arbitrary government. But I do humbly conceive no construction can force these words against me for an arbitrary government: For the meaning is, and can be no other, for sometimes a stricter, and sometimes a remisser holding and ordering the reins of government; yet both according to the same laws, by a different use and application of mercy and justice to offenders. And so I answered to Mr. *Browne*, who charged this against me as one of my ill counsels to his majesty. But my Answer given is truth: For it is not said, That there should not be one law for government, but not one way in the ordering and execution of that law. And the *Observer* upon my speech, an English author, and well enough known, though he pretends it is a translation out of Dutch, though he spares nothing that may be but carped at; yet to this passage he says, it is a good maxim, and wishes the king would follow it. [Divine and politic Observations upon my Speech, p. 78.] And truly, for my part, I learned it of a very wise and an able governor, and he a king of England too; it was of Henry 7, of whom the Story says, That in the difficulties of his time and cause he used both ways of government, severity and clemency; yet both these were still within the compass of the law. He far too wise, and I never yet such a fool, as to imbrace arbitrary government." [Speed in Hen. 7. § 16.]

June 14, 1644. This day I received a Note from the Committee, that they intended to proceed next upon the remainder of the Seventh, and upon the Eighth and Ninth Original Articles: Which follow in *hæc verba*:

VIII. "That for the better advancing of his traitorous purpose and design, he did abuse the great power and trust his majesty reposed in him: and did intrude upon the places of divers great officers, and upon the right of other of his majesty's subjects: whereby he did procure

to himself the nomination of sundry persons to ecclesiastical dignities, promotions and benefices, belonging to his majesty, and divers of the nobility, clergy, and others; and hath taken upon him the commendation of chaplains to the king; by which means he hath preferred to his majesty's service, and to other great promotions in the church, such as have been popishly affected, or otherwise unsound and corrupt both in doctrine and manners.

IX. "He hath for the same traitorous and wicked intent, chosen and employed such men to be his chaplains, whom he knew to be notoriously disaffected to the reformed religion, grossly addicted to Popish superstition, and erroneous and unsound both in judgment and practice. And to them, or some of them, he hath committed the Licensing of Books to be printed; by which means divers false and superstitious books have been published, to the great scandal of religion, and to the seducing of many of his majesty's subjects."

*The Fourteenth Day of my Hearing.*

Monday, June 17, 1644. At the ending of the former day's Charge, I was put off to this day, which held.

I. The first Charge was concerning Mr. Damport's leaving his benefice in London, and going into Holland.

1. The first Witness for this was *Quaterman*, a bitter enemy of mine; God forgive him; He speaks as if he had fled from his ministry here for fear of me. But the second Witness, Mr. Dukeswell, says, that he went away upon a warrant that came to summon him into the High-Commission. The truth is, my lords, and it is well known, and to some of his best friends, that I preserved him once before, and my lord Vere came and gave me thanks for it. If after this he fell into danger again, *majus peccatum habet*; I cannot preserve men that will continue in dangerous courses. He says farther, (and in this the other witness agrees with him) That when I heard he was gone into New-England, I should say my arm should reach him there. The words I remember not. But for the thing, I cannot think it fit that any plantation should secure any offender against the church of England. And therefore if I did say my arm should reach him, or them so offending, I know no crime in it; so long as my arm reached no man but by the law.

2. The second Witness, Mr. Dukeswell, adds nothing to this, but that he says, sir Maurice Abbot kept him in before. For which testimony I thank him. For by this it appears, that Mr. Damport was a dangerous factious man, and so accounted in my predecessor's time, and it seems prosecuted then too, that his brother sir Maurice Abbot was fawn, being then a parishoner of his, to labour hard to keep him in.

II. The second Charge was concerning Nathaniel Wickens, a servant of Mr. Prynne.

1. The first Witness in this cause was *William Wickens*, father to Nathaniel. He says, his son was nine weeks in divers prisons, and for no cause but for that he was Mr. Prynne's servant. But it appears *apud Acta*, that there were many Articles of great misdemeanour against him. And afterwards himself adds, That he knew no cause, but his refusing to take the oath *ex officio*. Why, but if he knew that, then he knew another cause, beside his being Mr. Prynne's servant: unless he will say all Mr. Prynne's servants refuse that oath, and all that refuse that oath are Mr. Prynne's servants. As for the Sentence which was laid upon him, and the imprisonment, that was the act of the High-Commission, not mine. Then he says, That my hand was first in the warrant for his commitment. And so it was to be of course.

2. The second Witness was *Sarah Wayman*. She says, That he refused to take the Oath. Therefore he was not committed for being Mr. Prynne's servant. She says, That for refusing the oath, he was threatened he should be taken *pro confesso*: And that when one of the doctors replied, "That could not be done by the Order of the Court," I should say, "I would have an Order by the next Court day." It is manifest in the course of that court, that any man may be taken *pro confesso*, that will not take the oath, and answer. Yet seeing how that party of men prevailed, and that one doctor's doubting might breed more difference, to the great scandal and weakening of that court; I publicly acquainted his majesty and the lords with it: who were all of opinion, that if such refusers might not be taken *pro confesso*, the whole power of the court was shaken. And hereupon his majesty sent his letter under his signet, to command us to uphold the power of the court, and to proceed. She says farther, That he desired the sight of his Articles, which was denied him. It was the constant and known course of that court, that he might not see the Articles till he had taken the oath, which he refused to do.

3. The Third Witness was one *Flower*. He agrees about the business of taking him *pro confesso*: But that is answered. He adds, That there was nothing laid to his charge: and yet confesses, that Wickens desired to see the Articles that were against him. This is a pretty oath: There were Articles against him, which he desired to see, and yet there was nothing laid to his charge.

4. Then was produced his majesty's Letter sent unto us. And herein the king requires us by his Supreme Power Ecclesiastical to proceed, &c. We had been in a fine case, had we disobeyed this command. Besides, my lords, I pray mark it, we are enjoined to proceed by the king's supreme power ecclesiastical; and yet it is here urged against me, that this was done to bring in popery. An excellent new way of bringing in Popery by the king's Supremacy. Yea, but they say, I should not have procured this letter. Why? I hope I may by all lawful ways preserve the honour and

just power of the court in which I sat. And it is expressed in the letter, that no more was done, than was agreeable to the laws and customs of the realm. And it is known that both an oath, and a taking *pro confesso* in point of refusal, are used both in the Star-Chamber and in the Chancery.

5. The last Witness was Mr. *Prynn*; who says, That his man was not suffered to come to him, during his soreness, when his ears were cropt. This favour should have been asked of the Court of Star-Chamber, not of me. And yet here is no proof that I denied him this, but the bare report of him, whom he says he employed. Nor do I remember any man's coming to me about it.

III. The third Charge followed; it was concerning stopping of Books from the Press, both old and new, and expunging some things out of them.

1. The first Instance was about the English Bibles with the Geneva Notes. The Bibles with those Notes were tolerated indeed both in queen Elizabeth's and king James's time; but allowed by authority in neither. And king James said plainly, That he thought the Geneva translation was the worst, and many of the Notes very partial, untrue, seditious, and savouring too much of dangerous and traitorous conceits: and gave instance.\* This passage I then read to the Lords: and withal told them, That now of late these Notes were more commonly used to ill purposes than formerly, and that that was the cause why the High Commission was more careful and strict against them than before.

Here *Michael Sparks* the elder came in as Witness, and said, He was called into the High Commission about these Books: but he confesses, it was not only for them. He says, "The restraint of those Bibles was for the Notes:" but he adds, "as he supposes." And his supposal is no proof. Besides, he might have added here also, that the restraint was not for the Notes only: for by the numerous coming over of Bibles, both with and without Notes, from Amsterdam, there was a great and a just fear conceived, that by little and little printing would quite be carried out of the kingdom. For the Books which came thence, were better print, better bound, better paper, and, for all the charges of bringing, sold cheaper. And would any one buy a worse Bible dearer, when he might have a better cheaper? And to preserve printing here at home, as well as the Notes, was the cause of stricter looking to those Bibles. And this appears by a letter of sir William Boswell's, his majesty's agent in the Low Countries; the letter written to me, and now produced against me: but makes for me, as I conceive. For therein he sends me word of two impressions of the Bible in English, one with Notes, and the other without; and

desires me to take care to regulate this business at home. What should I do? Should I sleep upon such advertisements as these, and from such a hand? Especially since he sends word also, that Dr. Anyes was then printing of a book wholly against the Church of England. So my care was against all underminings, both at home and abroad, of the established doctrine and discipline of the Church of England, for which I am now like to suffer. And I pray God that point of Arminianism, *Libertas Prophetandi*, do not more mischief in short time, than is expressible by me.

2. The second Instance was about the new Decree of the Star-Chamber, concerning Printing. Four Articles of this Decree were read, namely, the 1st, 2d, 18th, 24th. What these are, may be seen in the Decree: and as I think that whole Decree made A.D. 1637, useful and necessary; so, under your lordships favour, I think those four Articles as necessary as any.

Mr. Waly and Mr. Downes, two stationers, Witnesses in this particular, say, That they desired some mitigation of the Decree, and that Judge Bramston said, he could not do it without me. I saw my Lord Chief Justice Bramston here in the court but the other day; why was not he examined, but these men only, who oppose all regulating of the press that opposes their point? And sure that grave judge meant, he could not do it alone without the consent of the court. Or if he would have me consulted, it was out of his judicious care for the peace of this Church, almost pressed to death by the liberty of printing. The chief Grievance they expressed against the new licensing of Books, was only for matter of charges; but that is provided for in the eighteenth Article. And Mr. Downes takes a fine oath, which was, That he makes no doubt, but that all was done by my direction; and yet adds, that he cannot say it. So he swears that which, himself confesses, he cannot say. And manifest it is in the Preface, that this Decree was printed by order of the Court, and so, by their command, sent to the Stationers-hall: and the end of it was to suppress seditious, schismatical, and mutinous books, as appears in the first Article.

3. The third Instance was, That I used my power to suppress Books in Holland. This was drawn out of a letter which John le Mare, one of the prime preachers in Amsterdam, writ to me; expressing therein, That since the Proclamation made by the States, no man durst meddle with printing any seditious Libels against either the State or Church of England. Where is the fault? For this gentleman did a very good office to this kingdom and church, in procuring that Proclamation: for till this was done, every discontented spirit could print what he pleased at Amsterdam, against either. And if he had any direction from me about it, which is not proved, I neither am, nor can be sorry for it. And the fear which kept men in from printing, proceeded from the Proclamation of the States, not from any power of mine.

\*. Conference at Hampton-Court, see vol. 2, p. 70.

4. The fourth Instance was in the "Book of Martyrs." But that was but named to credit a base business, an Almanack made by one Mr. Genebrand;\* in which he had left out all the Saints, Apostles and all, and put in those which are named in Mr. Fox, and yet not all of them neither; for he had left out the solemn days, which are in Fox, as Feb. 2, Feb. 25, Mar. 25. And Cranmer translated to Mar. 23. In this particular Mr. Genebrand, brother to this Almanack-maker, witnesseth, that the queen sent to me about this new Almanack. If her majesty did send to me about it, (as it is probable she would disdain the book,) is that any crime in me? Could I prevent her majesty's sending, who could not know so much as that she would send? He says, His brother was acquitted in the High Commission, but charged by me that he made a faction in the court. If I did say so, surely, my lords, I saw some practising by him in this new-found way. He says, The Papists bought up a great number of these Almanacks, and burnt them. It seems he could not hinder that, nor I neither; unless it shall not be lawful for a papist to buy an Almanack: for when he hath bought him, he may burn him if he please.

But since the "Book of Martyrs" was named, I shall tell your lordships how careful I was of it. It is well known how easily Abridgements, by their brevity and their cheapness, in short time work out the authors themselves. Mr. Young the printer laboured me earnestly and often for an Abridgment of the Book of Martyrs; but I still withstood it, as my Secretary here present can testify, upon these two grounds: The one, lest it should bring the large Book itself into disuse; and the other, lest if any material thing should be left out, that should have been charged as done of purpose by me, as now I see it is in other books. And I humbly pray your lordships cast your eyes upon the Frontispiece of the Book of Martyrs, printed A. D. 1642, since this parliament began, and when I was safe enough from having any hand in the business, and there you shall see as dangerous pictures as have been charged upon me, or any my Chapel Windows.

Upon occasion of Mr. Genebrand's Calendar, Mr. Prynn took occasion to tell the Lords, That I had made Notes upon the Calendar in the Missal. I desired they might be read: it was thought too tedious. They were nothing but some Additions of my own reading to the occurrences on some days. And because the Calendar in the Missal was open and large, I thought fit to write them there.

5. The fifth Instance is in Dr. Pocklington's Censure of —,† and of Flaccius Illyricus; and that this book was licensed by my chaplain Dr. Bray; and he was censured in this honourable house for that and like slips of his. Then it was inferred at the bar, That it must

be taken as my act, if it were done by my chaplain: but inferences are no sworn proof. And, I conceive, no man can by law be punished criminally for his servant's fact, unless there be proof that he had a hand in it. Then it was urged, but without any proof too, that Dr. Pocklington was preferred by me. To which I shall answer when proof is made; and if I had, it is far enough from treason.

6. The next Instance was about the calling in of Thomas Beacon's Disputation of the Mass. The Witness Mr. Prynn. He says, The book was licensed, and that a papist thereupon said, Doth my lord of Canterbury license such books? That I was informed of these words, and the book called in the next day. First, Mr. Prynn is single in this part of the testimony for the words. Secondly, if any Papist did say so, it was not in my power to stop his mouth; and they which license books must endure many and various censures, as the readers of them stand affected. Thirdly, If any papist did so speak, I have reason to think it was to do me a mischief, as much as in him lay. Fourthly, This is a very bold oath; for he swears, that I was informed of these words. He was not present to hear it, and then he can have it but by hearsay; and no religion teaches him to swear that for truth, which he doth but hear. Lastly, The book was called in, because it was slipt out contrary to the late Decree for printing. Yea, but Mr. Prynn swears, and so doth Michael Sparks the other Witness, That the Book was sent to the printer before the Decree. But first, Sparks's Oath is uncertain; for he says, Mr. Prynn sent him the Book before the Decree; and then by and by after says, it was about that time. Now the Book is somewhat large, so that it might be sent him before the Decree, and yet not be printed till after, and that a good space too. And, secondly, Mr. Prynn himself confesses, the Book was sent when the Decree was in agitation.

7. The seventh Instance was about Arminianism, as maintained by me against the Declarations of both houses of parliament, and of king James, concerning Vorstius and Bertius. First, I have nothing to do to defend Arminianism, no man having yet charged me with the abetting any point of it. Secondly, King James's Declaration is very learned: but under favour, he puts a great deal of difference between Vorstius and Bertius; and his majesty's opinion is clear with the Article of the Church of England, and so expressed by himself; and to which I ever consented. And the passage in the Conference at Hampton-Court was then read to the Lords: and yet for the peace of Christendom, and the strengthening of the Reformed Religion, I do heartily wish these differences were not pursued with such heat and animosity, in regard that all the Lutheran Protestants are of the same opinions, or with very little difference from those which are now called Arminianism.

And here comes in Michael Sparks, who says, He was called into the High-Commission

\* His name was Gellibrand. W. S. A. C.

† I believe the name here wanting is Mr. Fox the Martyrologist. W. S. A. C.

about a book of bishop Carleton's. I cannot punctually remember all particulars so long since; but he confesses the business was in the High-Commission, and so not singly chargeable against me. Besides, he is single in this business. He says, he was eleven years in the High-Commission, and never sentenced. 'This is more than I know: but if it be so, he had better luck than some honest men; for a bitter enemy, to his power, the church-government never had.' He was Mr. Pryn's printer. He says, I was a dean then, and he thinks of Hereford. I was never dean of Hereford: but howsoever, this is a dangerous oath; let him think of it. He swears that I was a dean then, and a High-Commissioner, or else what had I to do in the business? Now it is well known I was never a High-Commissioner, till I had been a bishop some years. For the book itself, Sparks says nothing what was the argument of it; but (so far as I remember) it was expressly against the king's declaration. 'And so I answered Mr. Browne, when he summed up the Evidence against me in the house of commons. And though in his reply he seemed to deny this, yet I remember no proof he brought for it.'

8. The last instance was pregnant, and brought forth many particulars. 1. As first, Dr. Featly's Parallels against bishop Mountague: but this was still-born; at least it says nothing of me. 2. Mr. Pryn's Perpetuity, and against Dr. Cosens, both burnt. But he doth not say absolutely burnt, but as he is informed; and he may be informed amiss. And howsoever he says, it was done by the High-Commission, not by me. 3. Some sheets of Dr. Succiff's Book prohibited the press at Oxford. I hope Oxford is able to give an account for itself. And whereas it was here said at the bar, They hoped I would shew some repressing of the contrary part; I would satisfy their hopes abundantly, could I bring witnesses from Oxford, how even and steady a hand I carried to both parts. 4. Mr. Burton questioned about his book called, "The Seven Vials:" but himself confesses, That upon sir Henry Martin's information, that, as that cause was laid, the High-Commission had no power in it, he was dismissed. 5. That about his Book, intitled, "Babel, no Bethel," he was questioned at a court out of term. This was very usual, whensoever the court was full of business, to hold one court-day out of term. This is warranted by the commission; and warning of it was always publicly given the court-day before, that all whom it concerned might take notice of it, and provide themselves. 6. He says he was there railed at by bishop Harsnet. It is more than I know that bishop Harsnet railed at him; but if he did, I hope I am not brought hither to answer all men's faults. 7. He says, He claimed the Petition of Right, yet was committed. This is more than I know or believe; yet if it were so, it was done by the High-Commission Court, not by me. 8. He says next, That he could never be quiet. But I am

sure, my lords, the church for divers years could never be in quiet for him and his associates. 9. Lastly, they say, some passages against Arminianism were left out of two letters; one of bishop Davenant's, and the other of bishop Hall's, sent to be printed. First, here is no proof at all offered, that I differed in any thing from the doctrine expressed in those letters. And, secondly, for the leaving out of those passages, it was (it seems) done to avoid kindling of new flames in the Church of England. And it appeared on the other side of the paper, which was produced against me, and so read to the lords, that these passages were left out by the express order from those bishops themselves, under bishop Hall's own hand, and with thanks to Dr. Turner, then my chaplain, for his letter to them. And here this day's business ended; and I received command to attend again the twentieth of the same month.

*The Fifteenth Day of my Hearing.*

Thursday, June 20, 1644. This day I came again to the house. A day or two before, as now also, the landing-place at Westminster was not so full of people; and they which were there, much more civil towards me than formerly. My friends were willing to persuade me, that my Answer had much abated the edge of the people, saving from the violent and factious leaders of the multitude, whom it seems nothing would satisfy but my life (for so I was after told in plain terms by a man deeply interested in them); when I presently saw Quaterman coming towards me; who, as soon as he came, fell to his wonted railing, and asked aloud, "What the lords meant, to be troubled so long and so often with such a base fellow as I was? They should do well to hang me out of the way." I heard the words with grief enough, and so left them and him in the hands of God. My servants were earnest to have me complain to the lords. I remembered my late complaint about the Pamphlets had no redress, and so forbore it. They notwithstanding, out of their zeal, complained to Mr. Lieutenant of the Tower, who presently went forth, and said he would school him; but I hearkened no more after it.

When I came to the bar, Mr. Nicolas began with great violence, and told the lords, the business grew higher and higher against me. What the business did, will after appear; but I am sure he grew higher and higher: and from this time forward, besides the violence of expression, gave me such language, as no Christian would give a Jew. But God, I humbly thank him, blessed me with patience; and so I made my ears obedient. That which made him say "the business grew higher and higher," was this: upon my often calling to have the Oaths at the Coronation of king James and king Charles compared, some of them repaired again to my Study at Lambeth, to search for all such copies of Coronation-Books as could there be found. In this diligent and curious search ('for Mr. Pryn's malice made it') they

found some Papers concerning Parliaments, no other (I praise God for it) than such as with indifferent construction might (I hope) well pass; especially, considering what occasion led me, and what command was upon me. And, as I have been told by able and experienced men, they would have been nothing, had they been found in any but this troublesome and distracted time about the rights of parliaments (as it is said). Howsoever, I was most unfortunate they should be now found; and I had not left them a being, but that I verily thought I had destroyed them long since: but they were unhappily found among the heaps of my papers. And so,

I. An Answer to the Remonstrance made June 17, 1628, (which is sixteen years since) was made the first Charge against me.

II. And the second Charge was, a Paper concerning a Declaration, Jan. 28, 1628. To both which I then answered; but because these are urged more than once, to help fill the people with new clamour, and because they are more closely pressed against me at the last day of my hearing; and because Mr. Browne, in his summary Charge, laid and charged all these papers together; to avoid tedious repetition, I will also make my whole and entire answer together, when that time comes.

III. The third Charge of this day was, a Letter of a Jesuit to his Superior, found in my Study, dated March 1628. Let the letter be dated when it will, I hope the Archbishop may get and keep the letters of any jesuits or others. How shall I be able to know or prevent their plots upon the Religion by law established, if this may not be done? Yet this I desire all men to take notice of, that this letter was not directed to me. I was then bishop of London: the letter was found in a search. But when by all possible care taken by the High-Commission, the author could not be found, I had (as I humbly conceive) great reason to keep it. And I then humbly desired the whole letter might be read. There was in it, That Arminianism (as it was urged) was their drug, and their plot against us, &c. The Jesuit seeing a fire kindling about these opinions, might write what he pleased to help on his cause: yet this drug, which he says is theirs, is the received opinion of all the Lutherans, and they too learned protestants to use their drugs. And if it be their drug, why do the Dominicans so condemn it? Nay, why doth the Master of the Sentences, and the School after him, for the most, determine rigidly against it? And whereas it is said, That these men had instruments at the Duke's chamber-door; that belongs not to me, I was not porter there. As for that power which I had (called by Mr. Nicolas the command of his ear), I used it as much as I could to shut such instruments thence. Beside, it is barely said, no proof at all offered, that such instruments were about the Duke's chamber-door. Other Papers were found in my study, above sixty at

least, expressing my continual labours for some years together, to reconcile the divided Protestants in Germany, that so they might go with united forces against the Romanists. 'Why are not these produced too? Would not Christianity and justice have my innocence cleared as well as my faults accused?'

IV. The fourth Charge was bishop Mountague's preferment. The Parliament (they say) called him in question,\* and the king called in his Book; yet in affront to the parliament, that he was preferred by me. No, it was then publicly known in court (whether now remembered or no, I cannot tell) that he was preferred by my lord duke; but being a church-business, the king commanded me to signify his pleasure to the signet-office: and the docket (which is all the proof here made) mentions him only by whom the king's pleasure is signified, not him that procures the preferment: so the docket in this case is no proof at all.

V. The fifth Charge was a Paper, intitled, "Considerations for the Church." Three exceptions against them. The Observation of the King's Declaration, art. 3. The Lecturers, art. 5. And the High-Commission and Prohibitions, art. 10, 11. The Paper I desired might be all read: nothing in them against either law or religion. And for Lecturers a better care taken, and with more ease to the people, and more peace to the church, by a combination of conformable neighbouring ministers, in their turns, and not by some one humorous man, who too often misleads the people. Secondly, My copy of "Considerations†" came from archbishop Harsnett, in which some sour expression concerning Emanuel and Sidney colleges in Cambridge, which the king in his wisdom thought fit to leave out. The king's Instructions upon these "Considerations" are under Mr. Baker's hand, who was Secretary to my predecessor; and they were sent to me to make exceptions to them, if I knew any, in regard of the ministers of London, whereof I was then bishop. And by this, that they were thus sent unto me by my predecessor, it is manifest, that this Account from the several dioceses to the archbishop, and from him to his majesty once a year, was begun before my time. Howsoever, if it had not, I should have been glad of the honour of it, had it begun in mine. For, I humbly conceive there cannot be a better or a safer way to preserve truth and peace in the church, than that once a year every bishop should give an account of all greater occurrences in the church to his metropolitan, and he to the king: Without which, the king, who is the Supreme, is like to be a great stranger to all church proceedings.

VI. The sixth Charge was about Dr. Sibthorp's Sermon, That my predecessor opposed

\* See No. 124, vol. 2, p. 1257.

† I suppose these Considerations are those published in Fyryn's Compl. Hist. p. 287. W. S. A. C.

the printing of it, and that I opposed him, to affront the parliament\*. Nothing so, my lords: Nothing done by me to oppose, or affront the one or the other. This Sermon came forth when the Loan was not yet settled in parliament. The Lords, and the Judges, and the bishops, were some for, some against it. And if my judgment were erroneous in that point, it was misled by lords of great honour and experience, and by judges of great knowledge in the law. But I did nothing to affront any. It is said, that I inserted into the Sermon, "That the people may not refuse any tax that is not unjustly laid." I conceive nothing is justly laid in that kind but according to law, God's and man's: And I dare not say, the people may refuse any thing so laid. For *Jus Regis*, the Right of a King, (which is urged against me too) I never went farther than the scriptures lead me; nor did I ever think that *Jus Regis*, mentioned 1 Sam. viii. is meant of the ordinary and just Right of Kings, but of that power which such as Saul would be, would assume unto themselves, and make it right by power, 1 Sam. viii. 12.

Then they say I expunged some things out of it: As, 1. The "Sabbath," and put instead of it the "Lord's-Day." What is my offence? Sabbath is the Jews word, and the Lord's-Day the Christians. 2. About evil Counsellors, to be used as Haman. The passage, as there expressed, was very scandalous, and without just cause, upon the lords of the council. And they might justly have thought I had wanted discretion, should I have left it in. 3. That I expunged this, "That Popery is against the first and the second commandment." If I did it, it was because it is much doubted by learned men, whether any thing in Popery is against the first Commandment, or denies the Unity of the God-head. And Mr. Perkins, who charges very home against Popery, lays not the breach of the first Commandment upon them. 'And when I gave Mr. Browne this Answer; in his last Reply he asked why I left out both? 'Why, I did it because its being against the second is common and obvious, and I did not think it worthy the standing in such a Sermon, 'when it could not be made good against the first.'

But they demanded, Why I should make any animadversions at all upon the Sermon? It was thus: The Sermon being presented to his majesty, and the argument not common, he committed the care of printing it to bishop Mountain, the bishop of London, and four other; of which I was one. And this was the reason of the Animadversions now called mine; as also of the Answer to my predecessor's Exceptions, now charged also, and called mine. But it was the Joint-Answer of the Committee. And so is that other particular also, in which the whole business is left to the learned in the laws: For though the Animadversions be in my hand, yet they were done at and by the Com-

mittee, only I being puny bishop, was put to write them in my hand.

VII. The seventh Charge was Dr. Manwaring's Business and Preferment. It was handled before, only resumed here to make a noise, and so passed it over.\*

VIII. The eighth Charge was concerning some Alterations in the Prayers made for the 5th of November, and in the Book for the Fast, which was published anno 1636, and the prayers on the Coronation-Day.

1. For the Fast-Book: The Prayer mentioned was altered, as is expressed; but it was by him that had the ordering of that Book to the press, not by me. Yet I cannot but approve the reason given for it, and that without any the least approbation of merit: For the abuse of Fasting, by thinking it meritorious, is the thing left out: whereas in this age and kingdom, when and where set Fastings of the church are cried down, there can be little fear of that erroneous opinion of placing any merit in fastings.

2. For the Prayers published for the fifth of November and Coronation-Day; the Alterations were made either by the king himself, or some about him when I was not in court: And the Book sent me, with a command for the printing, as there altered. I made stay till I might wait upon his majesty. I found him resolved upon the Alterations; nor in my judgment could I justly except against them. His majesty then gave warrant to the Books themselves, with the Alterations in them; and so by his warrant I commanded the printing. And I then shewed both the books to the lords, who viewed them, and acknowledged his majesty's hand, with which, not his name only, but the whole warrant was written.

And here I humbly desired three things might be observed, and I still desire it. 1. With what conscience this Passage out of my Speech in the Star-Chamber (p. 32.) was urged against me, (for so it was, and fiercely by Mr. Nicolas) to prove that I had altered the Oath at the King's Coronation, because the Prayers appointed for the Anniversary of the Coronation were altered. 'Which is absolute nonsense.' 2. He charged me that the word Antichristian was left out. But that is visibly untrue: for it is left in. 3. That though it be in, yet that the Alteration takes it off from the Papist, as also their rebellion. Neither: For the Change is this: "That Antichristian sect," altered into the "Antichristian sect of them which," &c. and, "whose religion is rebellion," altered into "who turn religion into rebellion." By which it is manifest, that the Alteration takes off neither imputation from the Papist, but moderates both. And for aught I yet know, it is necessary it should: For if their religion be rebellion, see what it will produce. Is not this the syllogism? The Religion of the Papist is Rebellion; but Christianity is the Religion of

\* See No. 126, vol. 2, p. 1449.

\* See No. 131, vol. 3, p. 335.

the Papist: Therefore Christianity is Rebellion. I may not enlarge; but you may see more, if you please, in my speech in the Star-Chamber. (p. 36.) 'And when Mr. Browne in the Sum of his Charge pressed these Alterations hard against me, he did not so much as mention that I had the king's both warrant and command to all that I did in that particular. And besides urged this as a great Innovation; because the prayers mentioned had continued unaltered for the space of above 30 years; not remembering therewith, that the liturgy of the church, established by act of parliament, must be taken away, or altered, though it hath continued above fourscore. Nay, and episcopacy must be quite abolished, though it have continued in the church of Christ above 1600.'

IX. The ninth Charge was from sir Edward Hungerford, who came to Lambeth to have a little Book licensed at the press. The author was sir Anthony Hungerford; whether sir Edward's grandfather or his uncle, I remember not the relation. He says he came to my chaplain Dr. Bray to license it; and that Dr. Bray told him there were some harsh phrases in it, which were better left out, because we were upon a way of winning the Papists. 1. I hope I shall not be made answerable for my chaplain's words too. And 2. I hope there is no harm in winning the Papists to the church of England; especially, if so easy a cure as avoiding harsh language would do it. He says, my chaplain expressed a dislike of Guicciardin's censure of pope Alexander the 6th. Sure, if the censure be false, he had reason to except against it: If true, yet to publish such an unsavoury business to the common people.—He says, he came and complained to me; and that I told him I was not at leisure, but left it to my chaplain. So the Charge upon me was, that my chaplain was in an error concerning this Book, and I would not redress it. To this I answered, 1. That my Chaplain was dead; and I not knowing the reasons which moved him to refuse licensing this Book, can neither confess him to be in an error, nor yet justify him. 2. For my own refusing to meddle with it, sir Edward took me in a time of business, when I could not attend it. 3. If I had absolutely refused it, and left it to my chaplain, I had done no more than all my predecessors did before me. And Dr. Featly then witnessed to the Lords, that archbishop Abbot, my immediate predecessor, and to whom the doctor was household chaplain, would never meddle with licensing books, but ever referred them to his chaplains. And Dr. Mocket, another of his chaplains (well known to Dr. Featly), suffered for a Book sharply; yet not one word said to my predecessor about it. 4. As the Liberty of the Press is in England, and of the books which are tendered to the press, the Archbishop had better grind than take that work to his own hands, especially considering his many and necessary avocations. Lastly, No man ever complained to me

in this kind, but this gentleman only. So it is one only single offence, if it be any. But how this, or the rest, 'should be treason against sir Edward Hungerford, I cannot yet see. And so I answered Mr. Browne, who in his summary Charge forgot not this. But Mr. Nicolas laid load upon me in his Reply, in such language as I am willing to forget.'

X. The tenth Charge was out of a Paper of Considerations to Dr. Potter, about some few passages in his Answer to a Book intitled "Charity Mistaken." The business this: Dr. Potter writ to me for my advice. I used not to be peremptory; but put some few things back to his farther consideration: Of which three were now charged upon me. The first was, he used this phrase, "Believe in the Pope." I desired him to consider of "in." And in this I yet know not wherein I offend. The second was this phrase, "The Idol of Rome." I advised him to consider this phrase too, that men might not be to seek what that idol was. And here Mr. Nicolas cried out with vehemency, That every boy in the street could tell the Pope was the idol. I had not Dr. Potter's Book now at hand, and so could not be certain in what sense the doctor used it; but else, as many at least think the Mass the Idol of Rome, as the Pope; unless Mr. Nicolas's boys in the streets think otherwise, and then I cannot blame him for following such mature judgments.' The third was, that I bid him consider whether the Passage, p. 37, (as I remember) did not give as much power to the parliament in matter of Doctrine, as the church. But my Answer to this I shall put off to the Charge against me concerning Parliaments, because there Mr. Browne began with this. The two former he charged also, and I answered them as before. But he omitted, that I obtained of the Lords the reading of Dr. Potter's Letter to me; by which he drew from me those things which I determined not, but only put to his second thoughts and consideration. In which way, I humbly conceive, I cannot be in crime, though I were in error. Here ended the business of this day, and I was ordered to attend again June 27.

#### *The Sixteenth Day of my Hearing.*

I. Thursday, June 27, 1644. I appeared this day again: And the first Charge laid against me, was my chaplain Dr. Bray's expuntings out of Dr. Featly's Sermons. The same Charge *ad verbum* which was before; and I give it the same Answer: these repetitions of the same things being only to increase clamour, and to fill more men's ears with it.

II. The second Charge was certain Expunctions of some things against the Papists in Dr. Clark's Sermons. The Witness which swore to the passages left out was one Mr. White, a minister, and it seems some near acquaintance of Dr. Clark's. But, 1. This witness is single. 2. He brought only a Paper, in which he had written down what was expunged; but Dr.

Clark's Sermons he brought not with it: So it is not impossible he might be mistaken. However, I not having the book, could not possibly make an absolute and a perfect answer. S. This Witness confesses that Dr. Weeks, then chaplain to my lord of London, had the view of Dr. Clark's Sermons, and took Exceptions against some passages, as well as my chaplain Dr. Haywood did. So it seems there was cause for it. A. I answer, That for this, and for all other of like nature, my chaplain must answer for his own act, and not I. He is living, and an able man: I humbly desire he may be called to his account. For it is not possible for me to tell your lordships upon what grounds he did expunge these many and different passages, which are instanced against me. Lastly, In all the passages of Dr. Clark's Sermons, it is not any where distinguished which were expunged by my chaplain, and which by Dr. Weeks. So that the Charge in that behalf is left very uncertain.

For the Passages themselves, as they are many, so they are such as may easily be mistaken, the most of them. And whether Dr. Clark handled them in such manner as was not justifiable, either against Arminius or the Papists, cannot possibly be known, till each place in the Book be examined for the thing, and my chaplain Dr. Haywood for the meaning. 'This made a great noise in Mr. Browne's summary Charge against me: He alledging, 'that 22 Passages about points of Popery were dashed out of Dr. Clark's Sermons. To which I answered, That I conceived my Chaplain would be able to make it good, there were '200 left in for 22 left out; and that they 'which were left out, were not some way or 'other justifiable against the Papists, as set down and expressed by him. And if so, they 'are better out than in: for we gain nothing 'by urging that against the Papists, which, 'when it comes to the touch, cannot be made 'good against them.'

One Passage is here added out of Dr. Featly's Sermons, p. 225, where he inveighs against too much embellishing and beautifying the Church, and not the souls of men, &c. First, If there be not a care to beautify the soul, let men profess what religion they will, it is a just exception; and I believe no fault found with that. But, secondly, for the over-much beautifying of the Church, it is a point that might be well left out. Little necessity, God knows, to preach or print against too much adorning of churches among us, where yet so many churches lie very nastily in many places of the kingdom, and no one too much adorned to be found. Nay, the very Consecration of Churches cried down, as it before expressed. And this opinion, that no place is holy but during the service in it, made Mr. Culmer, though a minister, to piss in the Cathedral Church of Canterbury; and divers others to do so, and more against the pillars of St. Paul's, nearer hand, as may daily be both seen and smelt, to the shame of that which is called religion. 'Here Mr. Nicolas would faint

'have shovelled it to the out-side of the church, 'which had been bad enough; but it was the 'inside I spake of, and the thing is known.'

Then an Instance was made in a Book of Dr. Jones. The witness that any thing was expunged out of this, was only Mr. Chetwin. And he confesses, that this Book was licensed by Dr. Baker, and he my lord of London's chaplain, not mine. Here my friends at the bar infer, that Dr. Baker was preferred by me. First, That is not so; he was preferred by his own lord. Secondly, If he had been preferred by me, it could have made no charge, unless proof had been made that I preferred him for abusing Dr. Jones's Book. And for the Docket, which is the only Proof offered that I preferred him, I have already shewed that that is no proof. Yea, but they say, Dr. Baker was employed by me as one of my Visitors. And what then? Must I be answerable for every fault that is committed by every man that I employ in my Visitation, though it be a fault committed at another time and place? Though I humbly desire Dr. Baker may answer for himself, before I acknowledge any fault committed by him. 'And though I conceive this 'Answer abundantly satisfactory for any thing 'that may concern me, yet Mr. Browne omitted 'not this instance against me.'

III. The third Charge was personally against myself, and taken out of my Speech in the Star Chamber, (p. 47). The words these: "The altar is the greatest place of God's residence upon earth, greater than the pulpit; for there it is *Hoc est Corpus meum*. This is my Body; but in the other it is at most but *Hoc est Verbum meum*. This is my Word: and a greater reverence is due to the Body, than the Word of the Lord." Out of this place, Mr. Nicolas would needs infer, that I maintained Transubstantiation; because I say, there it is *Hoc est Corpus meum*. First, I perceive by him, he confounds, as too many else do, Transubstantiation with the Real Presence, whereas these have a wide difference. And Calvin grants a real and true Presence, yea, and he grants *realiter* too; and yet no man a greater enemy to Transubstantiation than he: as I have proved at large in my Book against Fisher, [Cont. Fisher, p. 202], and had leave to read the passage therein to the Lords. And Mr. Perkins avows as much. [Perkins's Opera in sol. p. 590.] And secondly, the word 'there' makes nothing against this. For after the words of Consecration are past, be the minister never so unworthy; yet it is infallibly *Hoc est Corpus meum* to every worthy receiver. So is it not *Hoc est verbum meum*, from the pulpit to the best of hearers, nor by the best of preachers since the Apostles time. 'And as Preaching 'goes now, scarce is any thing heard from 'many in two long hours, that savours of the 'Word of God.' And St. Paul tells us, 1 Cor. xi. 29, of a great sin committed in his time of "not discerning the Lord's Body," when unworthy Communicants received it. Where was

this? Why it was *there*, at the holy table or altar where they received, yet did not *discern*. I hope, for all this, St. Paul did not maintain Transubstantiation. 'Mr. Browne in his summary Charge pressed this also upon me. I answered as before, and added, That in all ages of the Church the touch-stone of Religion was, not to hear the Word preached, but to communicate. And, at this day, many will come and hear Sermons, who yet will not receive the communion together. And as I call the Holy Table the greatest place of God's residence upon earth, so doth a late learned Divine of this Church call the celebration of the Eucharist, "the crown of public service, and the most solemn and chief work of Christian assemblies:" (Thorndike of Assemblies, c. 8, p. 260): and he a man known to be far from affecting popery in the least. And all divines agree in this, which our Saviour himself teaches, St. Mat. xxvi. 26. "That there is the same effect of the Passion of Christ, and of this blessed Sacrament worthily received." [Idem est effectus Passionis Christi et Eucharistiæ. Thorn. p. 3, q. 79, A. 1. c.]

Another Passage taken out of my speech, was, "That due reverence be given to God, and to his Altar." Hence Mr. Nicolas infers again, this reverence is one joint act, therefore it is divine to the altar, as well as to God, and so idolatry. First, The very next words in my speech are, that this reverence to the Altar comes "far short of divine worship." What can prevent an objection, if such plain words cannot? Secondly, Having thus plainly expressed it, he may infer too, if he will, that I do not then worship God. For this reverence is one joint act; but it is confessed, that it is not divine worship to the altar, and therefore not to God. 'But thirdly, This gentleman, by 'his favour, understands not the mysteries 'which lie hid in many parts of divinity. In 'this for one.' For when this reverence is performed, it is to God as to the creator, and so divine; but it is only *toward*, and not *to* the altar, and so far short. And though in outward performance it be one joint act, yet that which is not separated, is and must be distinguished one from the other. 'To make a 'good work acceptable to God, there must be 'both faith and charity; they cannot be separated one from the other: what, shall they not 'therefore be distinguished? He that speaks '(saith St. Augustine) [St. Aug. l. 1. de Gen. ad Lit. c. 15.] by one joint act sends out his 'voice and his word; separated they cannot be, 'shall not they be distinguished therefore? 'But I have lived long enough, and taken pains 'to small purpose, if Mr. Nicolas, or any layman else, at his bye and leisure hours from a 'busy profession, shall be able to teach me 'in that which I have laboured all my life. 'And God bless the poor bishops and clergy 'of England, if falling into a storm (as I 'now am) they must have such judges as Mr. 'Nicolas!

IV. The fourth Charge is the licensing of Sales, and other Books which had Popery in them, by my chaplain Dr. Haywood.

1. To this Mr. Prynne (who is the single witness) says, That he tendered a Bill to the then Lord Keeper against my chaplain for licensing this Book, and that his lordship refused it. If the Lord Keeper Coventry refused his Bill, I believe, were he living, he would assign just cause why he did it. But whatever cause he had, it concerns not me, that he rejected the Bill. Mr. Prynne says farther, that this Book of Sales was printed heretofore, but purged first by Dr. James; but licensed now by Dr. Haywood, not according to that purgation, but with all the points of popery in. For this he produces Mr. Oakes, whose son printed it. And says, farther, that his corrector at the press found fault with some passages, and thereupon he was sent to Dr. Haywood, who returned answer (as they say), "That if he licensed it, he would justify it;" and that his son told him this. First, my lords, this under-testimony of Mr. Oakes, produced by Mr. Prynne, is nothing but a hearsay from his son, who is now dead, and cannot be examined; and while he was living, ran away, and would not be examined. Secondly, This was a most notable piece of villany practised against my chaplain, and, through his sides, against me. It was thus, my lords: Whether the Bill were rejected or no, I cannot tell; but the complaint of printing this Book came publicly into the Star-Chamber. And then was the first time that ever I heard of it. I then humbly desired their lordships, that Dr. Haywood might answer whatever he had done amiss, either there, or where they pleased. The Court presently commanded Mr. Attorney Banks to call all parties before him, examine them thoroughly, and then give his account what he found, that the Court might proceed farther according to justice. Dr. Haywood appeared, and shewed Mr. Attorney how he had corrected Sales in all popish points before he licensed it. But young Oakes, and he which brought Sales to be licensed (who was then thought to be some Jesuited Recusant, and, as I remember, lodged for that time of printing in Oakes's house), ran both away, or hid their heads, and would not be found. And this was a mere plot of this recusant, if not priest, to have Sales printed with all his points of Popery in him, to work mischief to my chaplain and myself: and young Oakes was in all likelihood well paid for his pains. This account Mr. Attorney brought into that Court, and this relation Dr. Haywood (who I obtained might be after sent for) attested at this bar.

One circumstance my old decayed memory mistook. For I thought, and so at first told the Lords, that for this clamour raised upon him in this way, I did soon after dismiss him my house. But after, I found that he was gone out of my house before. Howsoever, I left him without any mediation to the justice of the court. And here I may not forget that which I then observed to the Lords, that

whereas it is urged, that many points of Popery have passed the press; it is no wonder, if such art be used as was here to get out Sales. And this farther is observable, that all these quotations of popish opinions, mentioned here to fill up the noise, are out of four or five books at the most, of which more are out of this Sales than all the rest. 'And called in' he 'was, as soon as known. Which Mr. Browne 'in the sum of his charge acknowledges.'

2. After Sales, the next instance was in a Book intitled, Christ's Epistle to the devout Reader. Four particular points were urged out of this: but neither I nor my chaplains had ought to do with it. For it was licensed at London-House by Dr. Weeks. Nor was there ever any complaint brought to me to have it called in: nor was any such proof so much as offered.

3. The third Instance was of a Book called The Female Glory, where Mr. Prynn (who is single again) said, that Dr. Heylin answered Mr. Burton, and justified all the passages in this Book: and added, that this was by my direction. But upon my motion at the bar concerning the boldness of this oath, Mr. Prynn recalled himself, and said, that I appointed him to answer Mr. Burton. But it is one thing to appoint him to answer Mr. Burton, and another to direct him to justify all passages in The Female Glory.

4. The fourth Instance was in a Letter sent to me from one Croxton, a young divine in Ireland. He was bred in St. John's-College in Oxford. At the lord Mountnorris's intreaty, I sent Croxton into Ireland to be his chaplain. If he miscaried there, I could not help it, nor hinder his writing of a Letter to me, nor prescribe what he should write in it. But, to my remembrance, I never heard of any miscarriage of his in matter of religion: and whether he be living or dead, I know not. That Letter indeed had a cross at the top of it. But then was another Letter of his shewed without a cross, in which he calls Rome, "Monstrum Abominandum." Howsoever, I conceive all this is nothing to me.

5. The fifth Instance was a Book, which they said was licensed by Dr. Weeks. And if so, then not by my chaplain. But upon perusal, I find no licence printed to it, nor to any of the other, but only to Sales, which is answered.

6. The sixth Instance was in bishop Mountague's Books, the Gag and the Appeal. Here they said, that Dr. White told Dr. Featly, "That five or six bishops did allow these books." But he did not name me to be one of them. Then Mr. Prynn urged upon his oath, that these books were found in my study. And I cannot but bless myself at this argument. For I have Bellarmine in my study, therefore I am a Papist; or I have the Alcoran in my study, therefore I am a Turk, is as good an argument as this: I have bishop Mountague's books in my study, therefore I am an Arminian. May Mr. Prynn have books in all kinds in his

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study, and may not the archbishop of Canterbury have them in his? Yea; but he says, there is a Letter of the bishop's to me, submitting his books to my censure. This letter hath no date, and so belike Mr. Prynn thought he might be bold both with it and his oath, and apply it to what books he pleased. But as God would have it, there are circumstances in it as good as a date. For it is therein expressed, that he was now ready to remove from Chichester to Norwich. Therefore he must needs speak of submitting those his books to me, which were then ready to be set out, which were his Origines Ecclesiasticæ; not the Gag, nor the Appeal, which are the books charged, and which were printed divers years before he was made a bishop: and my receipt indorsed upon it, is Mar. 29, 1638. And I hope Mr. Nicolas will not call this the colour of an answer, as he hath called many of the rest given by me.

7. The seventh Instance was in a Book licensed by Dr. Martin, then my chaplain in London-House. This Book, Mr. Prynn says, was purposely set out to countenance Arminianism, as if it had been some work of moment, whereas it was answered twice in the queen's time. If Dr. Martin did this, it is more than I remember; nor can I so long after give any account of it. But Dr. Martin is living, and in town, and I humbly desired he might be called to answer. He was called the next day, and gave this account. [The account is wanting; a space left for it, but not filled up.]

Mr. Prynn says farther, that after this he preached Arminianism at St. Paul's Cross. Why did not Mr. Prynn come then to me, and acquaint me with it? which neither he nor any man else did. And I was in attendance at court, whither I could not bear him. And the Charge which came against him upon the next day's hearing, was this and no more, That one then preached at the Cross universal redemption; but he that gave testimony knew him not: only he says, one told him it was Dr. Martin.

8. The last Instance was of a Bible commonly sold, with a Popish Table at the end of it. This is more than I know, or ever heard till now; nor was any complaint ever brought to me of it. And I cannot know all things that are done abroad for gain; for that will teach them to conceal, as well as move them to act. Yet one of the popish heads mentioned in that table, was Confirmation, which is commanded in our Church-Liturgy, and ratified by law.

Here this day ended, and I was ordered to appear again July 4. That day I received a Note, under Mr. Nicolas's hand, that they meant to proceed upon the 8th, 9th, 10th, 11th, 12th, and 14th Original Articles, and the 6th and 7th Additionals. The last warrant for other Articles came under serjeant Wilde's hand, and Mr. Nicolas signing this, it seems, mistook: for the 8th and 9th Original Articles are in part proceeded on before. Now they

go forward with these, and then on to the rest; which I will write down severally, as they come to them.

The same day, being Thursday, all my Books at Lambeth were, by Order of the House of Commons, taken away by Mr. — secretary to the right honourable the earl of Warwick, and carried I know not whither, but are (as it is commonly said) for the use of Mr. Peters. Before this time, some good number of my Books were delivered to the use of the synod; the ministers which had them giving no Catalogue under their hands, which or how many they had. And all this was done contrary to an Order of the Lords, bearing date Novemb. 9, 1642, for the safe keeping of my Books there; and before I was convicted of any crime. This day also I received an Order, which put off my Hearing till the next day.

*The Seventeenth Day of my Hearing.*

I. Friday, July 5, 1644. This day I appeared again: and the first Charge against me was, that I had preferred none to Bishoprics, Deaneries, Prebends, and Benefices, but men Popishly affected, or otherwise unworthy. And some they named:

1. As first, Dr. Manwaring, disabled by the parliament.

2. Mr. Mountague, excepted against by parliament. But for these no proof was now brought: They referred themselves to what was said before, and so do I. And where they go to prove only by Dockets, I desire it may still be remembered that the Docket is a full proof who gave order for drawing the bill at the Signet-Office, but no proof at all who procured the preferment.

3. Bishop Corbett. But the earl of Dorset got my lord duke of Buckingham to prefer him, to make way for Dr. Duppa, his deserving chaplain, into Christ-Church. Nor was any thing charged against Dr. Corbett, but that he was preferred by me.

4. Bishop Pierce: against whom there was no proof offered neither. And he is living to answer it, if any be.

5. Nor was there now any proof offered against bishop Wren, who was named also: at the least, not till he was made a bishop. So if I did prefer him, it seems I did it when nothing was laid against him. And if after he had his preferment he did any thing unworthily, that could not I foresee; and he is living to answer it.

6. The sixth was bishop Lindsey, a man known to be of great and universal learning, but preferred by the then lord treasurer Portland, not by me. Him they charged with Arminianism. The witnesses two: The first, Mr. Smart; he is positive he was his fellow-prebendary at Durham. There was animosity between them. 'And Smart, not able to judge 'of Arminianism.' Secondly, Mr. Walker, who could say nothing, but that he heard so much from some ministers, and Dr. Bastwick. 'So here is as learned a man as Christendom

' had any of his time, debased in this great and ' honourable Court, by ignorance, and a hear- ' say; and that, when the man is gone to that ' which should be his quiet, the grave.'

7. The seventh was archbishop Neile, a man well known to be as true to, and as stout for, the church of England established by law, as any man that came to preferment in it. Nor could his great enemy Mr. Smart say any thing now against him, but a hearsay from one Dr. Moor of Winchester. And I cannot but profess, it grieves me much, to hear so many honest and worthy men so used, when the grave hath shut up their mouths from answering for themselves.

8. The next was Dr. Cosens, to be Dean of Peterborough. I named four of his majesty's chaplains to him, as he had commanded me: and the king pitched upon Dr. Cosens, in regard all the means he then had, lay in and about Duresm, and was then in the Scots bands: so that he had nothing but 40*l.* a year by his Headship in Peter-House, to maintain himself, his wife and children.

9. The ninth was Dr. Potter, a known Arminian, to the Deanery of Worcester. What proof of this? Nothing but the Docket. And what of the crime? Nothing but Dr. Featly's Testimony; who says no more but this, That Dr. Potter was at first against Arminianism (that is absolute): But afterwards he defended it, as he hath heard (there is a hearsay).

10. The tenth was Dr. Baker.

11. The eleventh Dr. Weeks. Both very honest and able men; but preferred by their own lord, the lord bishop of London.

12. The twelfth was Dr. Bray. He had been my chaplain above 10 years in my house; I found him a very able and an honest man, and had reason to prefer him to be able to live well; and I did so. Here is nothing objected against him, but his expurgings and not expurgings of some books; which, if he were living, I well hope he would be able to give a good account for.

13. The thirteenth Dr. Heylin. He is known to be a learned and an able man; but for his preferment, both to be his majesty's Chaplain, and for that which he got in that service, he owes it under God to the memory of the earl of Danby, who took care of him in the University.

14. After these, they named some, whom they said I preferred to be the King's Chaplains. The witness here Mr. Oldworth, the Lord-Chamberlain's Secretary. He says, the power and practice of naming Chaplains was in the Lord Chamberlain for these 25 years. And I say, it is so still, for aught I know. He says, that in all things concerning which the Lord Chamberlain's Warrant went in this form, "These are to will and require you, &c." that there his lordship did it without consulting the king; and that the Warrants for Chaplains run all in this form. First, This is more than I know, or ever heard of till now. Secondly, Be it it so; yet it is hard to deny the king to

bear men preach, before they be sworn his Chaplains, 'if his majesty desire it, since it argues a great care in the king, especially in 'such a fuction time as to overlay this church.' Thirdly, He confesses, that he knows not who put the king upon this way, but believes that I did it. He is single, and his belief only is no evidence. 'And whosoever gave the king 'that advice, deserved very well both of his 'majesty and the church of England: That 'none might be put about him in that service, 'but such as himself should approve of. But 'that which troubled this witness, was another 'thing. He had not money for every one 'that was made Chaplain; nor money to 'get them a month to wait in; nor money to 'change their month, if it were inconvenient 'for their other occasions; nor money for 'sparing their attendance when they pleased. 'In which, and other things, I would he had 'been as careful of his lord's honour, as I have 'been in all things. For it is well known in 'court I observed his lordship as much as 'any man.'

The men which are instanced in, are Dr. Heylin. But he was preferred to that service by my lord the earl of Danby. Then Dr. Potter. But the Lord-Keeper Coventry was his means. Dr. Cosens was preferred by bishop Neile, whose Chaplain he had been many years, and he moved the Lord Chamberlain for it. Dr. Lawrence was my Lord Chamberlain's own Chaplain, and preferred by himself; and in all likelihood by Mr. Oldsworth's means: for he was Fellow of Magdalen-College in Oxford, as Mr. Oldsworth himself was, and he once, to my knowledge, had a great opinion of him. Dr. Haywood indeed was my Chaplain; but I preferred him not to his majesty, till he had preached divers times in Court with great approbation; nor then, but with my Lord Chamberlain's love and liking. As for Dr. Pocklington, I know not who recommended him; nor is there any proof offered that I did it.

15. Then they proceeded to my own Chaplains. They name four of them: First, Dr. Weeks. But he was never in my house, never meddled with the licensing of any Books, till he was gone from me to the bishop of London: So he is charged with no fault, so long as he was mine. The second, Dr. Haywood. But he is charged with nothing but Sales, which was a most desperate Plot against him, as is before shewed. The third was Dr. Martin. Against him came Mr. Prynne, for his Arminian Sermon at St. Paul's Cross. But that is answered before. And Mr. Walker, who said, He proposed Arminian Questions to divers Ministers. Belike, such as were to be examined by him. But he adds, "As these ministers told him." So it is but a hearsay. And say he did propose such Questions, may it not be fit enough to try how able they were to answer them? The fourth was Dr. Bray. Against him Dr. Featly was again produced, for that which he had expunged out of his Ser-

mons. But when I saw this so often inculcated to make a noise, I humbly desired of the Lords, that I might ask Dr. Featly one question. Upon leave granted, I asked him, Whether nothing were of late expunged out of a Book of his written against a priest? and desired him to speak upon the oath he had taken. He answered roundly, That divers passages against the Anabaptists, and some in defence of the Liturgy of the Church of England, were expunged. I asked, By whom? He said, By Mr. Rouse and the Committee, or, By Mr. Rouse or the Committee. Be it which it will, I observed to the lords, that Mr. Rouse and the Committee might expunge passages against the Anabaptists, nay, for the Liturgy established by law; but my Chaplains may not expunge any thing against the Papists, though perhaps mistaken.—From thence they fell upon men whom they said I had preferred to Benefices. They named but two. Dr. Heylin was one again, whom I preferred not. The other was Dr. Jackson, the late President of Corpus Christi-College in Oxford. Dr. Featly, being produced, said, Dr. Jackson was a known Arminian. If so to him, it is well; the man is dead, and cannot answer for himself. Thus far I can for him, without meddling with any of his opinions: He was very honest and very learned, and at those years he was of, might deserve more than a poor benefice.

16. Here Mr. Prynne came in again, and testified very boldly, That I gave many Benefices, which were in the gift of the Master of the Wards: and all preferments only to such men as were for Ceremonies, Popery, and Arminianism. For the first of these two, the business was thus: There arose a difference between the then Lord Keeper Coventry and the lord Cottington, then Master of the Wards, about the disposing of those benefices. It grew somewhat high, and came to hearing by the king himself: His majesty, upon hearing, gave the right of sealing to the Lord Keeper; but for the time, till more might appear, reserved the giving to himself, that he might have some of those lesser preferments to bestow on such ministers as attended upon his navy then at sea. I never gave any one of these Benefices in my life. And that this story is of truth, the lord Cottington is yet living, and can witness it. 'And this very answer I gave to Mr. Browne, 'who in summing up the charge laid this also 'upon me, and without mentioning what answer I gave to it.' For the second, That I preferred none but such men; it is known I preferred bishop Hall to Exeter, Dr. Potter to Carlisle, Dr. Cook to Bristol first, and then to Hereford; that I gave Dr. Westfield the archdeaconry of St. Albans; that I was Dr. Fell's means for Christ-Church, and Dr. Higgs's for the deanery of Litchfield; that I settled Dr. Downing at Hackney, and Mr. Herrick at Manchester, when the broad-seal formerly given him was questioned: That I gave two of my own Benefices to Mr. Palmer and Mr. Taylor, two of the now synod; an hospital to Dr.

Jackson of Canterbury, and a Benefice to his son-in-law, at his suit. I could not name all these upon the sudden, yet some I did; and no one of them guilty of this charge in the least.

Mr. Browne in his summary said, I could name but one or two. And when in my answer made in the house of commons I specified more, among which Mr. Palmer was one; Mr. Browne said in his reply, That Mr. Palmer had indeed his benefice of my giving, so himself told him, but it was at the intreaty of a great nobleman. Say it were; Mr. Palmer was then a stranger to me: somebody must speak, and assure me of his wants and worth, or I cannot give. But if upon this I gave it freely, is it worth no thanks from him, because a nobleman spake to me? Let Mr. Palmer rank this gratitude among his other virtues.

17. From hence they stepped over into Ireland, and objected my preferring of Dr. Chappel to be Master of the College at Dublin. Here the first Witness is Mr. Walker. He says, That all his scholars were Arminians. This is a great sign, but not full proof. He says, That Dr. Chappel was at first fierce against them, but afterwards changed his mind. Dr. Featly said the like of Dr. Potter. Some say Arminius himself was at first zealous against those opinions, but studying hard to confute them, changed his own mind. 'Take heed, Mr. Walker, do not study these points too hard.' For my own part, Dr. Chappel was a Cambridge man, altogether unknown to me, save that I received from thence great testimony of his abilities and fitness for government, which that College then extremely wanted; and no man ever complained to me, that he favoured Arminianism.

The other Witness was Dr. Hoyle, a fellow of the college in Dublin. He says, That the doctor did maintain, in that college, Justification by Works, and in Christ-Church, Arminianism. In this he is single: But if it be true, why did not the Lord Primate of Armagh punish him? for he says, he knew it. That he opposed some things in the Synod: And it may be there was just cause for it. Lastly, he says, The late Lord Deputy liked not the Irish Articles, but gave them an honourable burial, as (he says) the Lord Primate himself confessed. I am a stranger to all this; nor doth Dr. Hoyle charge any thing against me; but says, That they which did this, were supposed to have some friend in England. And surely their carriage was very ill, if they had none.

18. Then were Letters read of my Lord Primate's to me, in which is testified my care of the patrimony of that church. And then a Paper of Instructions given by me to the Lord Deputy at his first going into that kingdom. For the first, though it be thrust in here among Matters of Religion, yet I pray your lordships to consider, it is about the patrimony of that church only; and I thank them heartily for producing it. For in this Letter is a full confession of my Lord Primate's, That the motion of getting the Impropriations from his majesty,

(formerly objected against me) proceeded from him, as I then pleaded. And the Letter was read. For the second, my Lord Deputy, a little before his first going into Ireland, asked me what service I would command him for the church there? I humbly thanked him, as I had reason, and told him I would bethink myself, and give him my thoughts in writing: These are they which are called Instructions. They are only for the good of that poor church, as your lordships have heard them. This was all; and herein my lord shewed his honour, and I did but my duty. 'Though I very well understand why this paper is produced against me.'

After this they proceeded to the Eleventh Original Article, which follows in *hæc verba*:

XI. "He in his own person, and his suffragans, visitors, surrogates, chancellors, or other officers, by his command, have caused divers learned, pious, and orthodox Preachers of God's Word to be silenced, suspended, deprived, degraded, excommunicated, or otherwise grieved and vexed, without any just and lawful cause; whereby, and by divers other means, he hath hindered the preaching of God's Word, caused divers of his majesty's loyal subjects to forsake the kingdom, and increased and cherished ignorance and profaneness amongst the people; that so he might the better facilitate the way to the effecting of his own wicked and traitorous design of altering and corrupting the true religion here established."

1. The first Instance to make good this Article, was a repetition of some Lecturers before-named. But when they thought they had made noise enough, they referred the Lords to their Notes; and so did I to my former Answers.

2. The second Instance was out of some Articles of bishop Mountague and bishop Wren, and their account given to me. Bishop Wren, Art. 16. speaks of the Afternoon-Sermons being turned into catechising: And Art. 5, (of his Account, I take it) that no Lecture in his diocese after, &c. It was made plain to the Lords, that this was spoken of some single and factious Lecturers; and that they had their Lectures read by a company of learned and orthodox ministers by turns; as appeared by the Monday Sermon at Bury, during that learned bishop's time. Nor were any forbid to preach in the afternoon, so the Catechising were not omitted, before it, or with it: And the bishop is living to answer it, if aught were then done amiss by him. In all which he did nothing as any deputy or surrogate of mine, but as diocesan of the place. As for the yearly Account to the king, according to his royal Instructions in that behalf, though it were pressed here again to multiply noise, yet nothing being new, I gave my answer as before, and to that I refer myself.

3. The third Instance was concerning Mr. Lee of Wolverhampton. The evidence was a Letter of my Secretary Mr. Dell, written by my command to my Visitors there, to this effect: That whether there were cause or no, they

should either punish Mr. Lee, or bring him into the High-Commission. Had the words or the sense been thus, they might well say, It was hard for the Judge before whom the party was to answer, to write thus. But I called to have the Letter read again, and the words were these: If there were found against him that which might justly be censured, then they should punish, &c. And the reason why this strict care was taken, was, because the dean of Windsor his ordinary complained unto me, That Mr. Lee's carriage was so factious there, that he could contain him in no order. If he were a man after this approved at Shrewsbury (as Mr. Walker witnesses), I hope the proceedings at Wolverhampton did him good. But, my lords, had it so fallen out, that my Secretary had forgotten my instructions, and himself too, and expressed himself amiss, shall that slip of his (had it been such) be imputed to me? I believe your lordships would not willingly answer for every phrase of your Secretaries Letters, which yet you command them to write.

4. The last Instance was the Sentence in the High Commission against Mr. Barnard, for Words about Pelagian Errors and Popery. First, If he were sentenced in the High Commission, it was the act of the Court, and not mine,\* as has been often said. Secondly, No proof is offered that he was sentenced for those Words only. Thirdly, The Recantation (howsoever refused by him, as Mr. Pryn says it was) makes mention of four points for which he was censured, of which these Words are one: but not the Words themselves, but his unjust and scandalous application of them to me, which deserves them not. And lastly, Dr. Camber, Master of Trinity College in Cambridge, was Prosecutor against him; which office so grave and worthy a man would not, I suppose, have undertaken, had there not been great and just cause for it.

Hence they proceeded to the Sixth Additional Article, which follows in these words:

VI. "That whereas divers Gifts and Dispositions of divers Sums of Money were heretofore made by divers charitable and well-disposed persons, for the buying in of divers Improvements for the maintenance of preaching the Word of God in several Churches; the said Archbishop about eight years last past, wilfully and maliciously caused the said Gifts, Feoffments and Conveyances, made to the uses aforesaid, to be overthrown in his majesty's Court of Exchequer, contrary to law, as things dangerous to the Church and State, under the specious pretence of buying in Improvements; whereby that pious work was suppressed and trodden down, to the great dishonour of God, and scandal of religion."

This Article is only about the Feoffments. That which I did, was this: I was, as then advised, upon such information as was given me, clearly of opinion, that this was a cunning way, under a glorious pretence, to overthrow the church-government, by getting into their power

more dependency of the Clergy, than the king, and all the peers, and all the bishops in all the kingdom had. And I did conceive the plot the more dangerous for the fairness of the pretence, and that to the state as well as the church. Hereupon, not maliciously, as it is charged in the Article, but conscientiously I resolved to suppress it, if by law it might be done. Upon this, I acquainted his majesty with the thing, and the danger which I conceived would, in few years, spring out of it. The king referred me to his Attorney and the Law. Mr. Attorney Noy, after some pause upon it, proceeded in the Exchequer, and there it was by judicial Proceeding and Sentence overthrown. If this Sentence were according to law and justice, then there is no fault at all committed: if it were against law, the fault, whatever it be, was the Judges, not mine; for I solicited none of them. And here I humbly desired, that the lords would at their leisure read over the Sentence\* given in the Exchequer, which I then delivered in; but by reason of the length, it was not then read: whether after it were, I cannot tell. I desired likewise that my council might be heard in this, and all other points in law.

1. The first witness was Mr. *Kendall*. He says, That speaking with me about Presten, I thanked God that I had overthrown this Feoffment.

2. The second witness, Mr. *Millar*, says, he heard me say, They would have undone the Church, but I have overthrown their Feoffment. These two witnesses prove no more than I confess: for in the manner aforesaid, I deny not but I did my best in a legal way to overthrow it. And if I did thank God for it, it was my duty to do so, the thing being in my judgment so pernicious as it was.

3. The third witness was Mr. *White*, one of the Feoffees. He says, That coming as Counsel in a cause before me, when that business was done, I fell bitterly on him as an underminer of the Church. I remember well his coming to me as counsel about a benefice; and it is very likely I spake my conscience to him, as freely as he did his to me, but the particulars I remember not; nor do I remember his coming afterwards to me to Fulham, nor his offer to change the men or the course, so the thing might stand. For to this I should have been as willing as he was: and if I remember right, there was order taken for this in the Decree of the Exchequer; and his majesty's pleasure declared, That no penny so given should be turned to other use. And I have been, and shall ever be as ready to get in Improvements, by any good and legal way, as any man (as may appear by my labours about the Improvements in Ireland). But this way did not stand either with my judgment or conscience.

1. First, Because little or nothing was given by them to the present Incumbent, to whom

\* Sir Leolin Jenkins hath a copy of it, out of the Records of the Exchequer. W. S. A. C.

the Tythes were due, if to any; that the parishioners which paid them, might have the more chearful instruction, the better hospitality, and more full relief of their poor.

2. 'Because most of the men they put in, were persons disaffected to the discipline, if not the doctrine too, of the Church of England.

3. 'Because no small part was given to school-masters, to season youth *ab ovo*, for their party; and to young students in the universities, to purchase them and their judgments to their side, against their coming abroad into the Church.

4. 'Because all this power to breed and maintain a faction, was in the hands of twelve men, who were they never so honest, and free from thoughts of abusing this power, to fill the Church with schism; yet who should be successors, and what use should be made of this power, was out of human reach to know.'

Fifthly, Because this power was assumed by and to themselves, without any legal authority, as Mr. Attorney assured me.

He farther said, That the Impropriation of Presteen in Radnorshire, was specially given to St. Antolin's in London. I say, the more the pity, considering the poorness of that country, and the little preaching that was among that poor people, and the plenty which is in London: yet because it was so given, there was care taken after the Decree, that they of St. Antolin's had consideration, and I think to the full. He says, That indeed they did not give any thing to the present Incumbents, till good men came to be in their places. Scarce one Incumbent was bettered by them. And what then? In so many places not one good man found? 'Not one factious enough against the Church, for Mr. White to account him good?' Yet he thinks I disposed these things afterwards to unworthy men. 'Truly, had they been at my disposal, I should not wittingly have given them to Mr. White's worthies.' But his majesty laid his command upon his Attorney, and nothing was done or to be done in these things, but by his direction. For Dr. Heylin, if he spake any thing amiss concerning this Feoffment, in any Sermon of his, he is living to answer it; me it concerns not. 'Mr. Browne, in the sum of the Charge, omitted not this; and I answered as before: and in his Reply he turned again upon it, That it must be a crime in me, because I projected to overthrow it. But, under favour, this follows not: for to project, (though the word Projector sound ill in England) is no more than to forecast and forelay any business. Now, as it is lawful for me, by all good and fit means, to project the settlement of any thing that is good; so is it lawful by good and legal means to project the overthrow of any thing that is cannily or apparently evil. And such did this Feoffment appear to my understanding, and doth still.' As for reducing of Impropriations to their proper use, they may see, if they please, in my *Diary* (whence they had this),

another project to buy them into the Church's use; for given they will not be. But Mr. Prynne would shew nothing, nor Mr. Nicolas see any thing, but what they thought would make against me.

Here this day ended, and I was commanded to attend again July 15, but was then put off to July 17, which day held.

*The Eighteenth Day of my Hearing.*

Wednesday, July 17, 1644. This day they charged upon me the Twelfth Original Article; which follows in these words:

XII. "He hath traitorously endeavoured to cause Division and Discord between the Church of England and other Reformed Churches; and to that end hath suppressed and abrogated the Privileges and Immunities, which have been by his majesty and his royal ancestors granted to the French and Dutch Churches in this kingdom: and divers other ways hath expressed his malice and disaffection to those churches, that so by such disunion the Papists might have more advantage for the overthrow and extirpation of both."

I. The first Charge is, that I deny them to be a Church: for they say that I say plainly in my Book against Fisher, that "No Bishop, no Church." [Cont. Fisher, § 25. p. 176.] Now it is well known they have no bishops, and therefore no church. The passage in my book is an inference of St. Jerom's opinion, no declaration of my own. And if they, or any other, be aggrieved at St. Jerom for writing so, they may answer him. Mr. Nicolas added, That this was seconded by bishop Mountague's Book, [Mount. Orig. Eccles. p. 464.] which Mr. Prynne (carefully) witnessed was found in my study, and licensed by Dr. Bray. Is this argument come again, that bishop Mountague's Book was in my study? 'Leave it, for shame!' But they have now left me never a book in my study; so I cannot make them any fuller answer, without viewing the place, than themselves help me to, by their own confession: which is, that he adds this exception, that none but a bishop can ordain, but *in casu necessitatis*, which is the opinion of many learned and moderate divines. 'Yet this is very considerable in the business, whether an inevitable necessity be cast upon them, or they pluck a kind of necessity upon themselves.'

II. The second Charge is out of a Letter of mine to bishop Hall, upon a Letter which he had formerly sent me. In which, it seems, is something about the case of necessity in point of ordination, which (they say) I disliked. And it seems, I disliked upon good ground: for he had given me power, under his hand, to alter what I would in that which he sent unto me. I would not take that power; but writ back to him what passages I thought might be better expressed, if it could agree with his judgment also. Hereupon he sent me another Letter of Jan. 18, 1639, in which he altered those things which I put to his farther consideration. Could

any thing be more fairly carried? And this Letter was read to the Lords. Yea, but they say, I disliked the giving of this title Antichrist to the pope. No, I did not simply dislike it; but I advised bishop Hall, if he thought it good, not to affirm it so positively. And the reason I gave was this: that king James being pressed upon a great occasion that he had maintained that the Pope was Antichrist, which might much trouble, if not quite cross some proceedings much desired by that prudent king; his majesty made answer, "I maintain it not as a point of faith, but as a probable opinion: and for which I have more grounds than the Pope hath for his challenge of temporal power over princes. Let him recall this opinion, and I will recall that." This I writ to the bishop, but left him free to do what he pleased.

Here Mr. Nicolas fell extremely foul upon me, inasmuch that I could not but wonder at their patience which heard him. Among other titles bestowed upon me, many and gross, he called me, over and over again, Pandar to the Whore of Babylon. I was much moved; and humbly desired the Lords, that if my crimes were such as that I might not be used like an Archbishop, yet I might be used like a Christian; and that were it not for the duty which I owe to God and my own innocency, I would desert my defence before I would endure such language in such an honourable presence. Hereupon some Lords shewed their dislike, and wished him to leave, and pursue the evidence.

'Mr. Browne in summing up the Charge made this a great matter, the denial of the Pope to be Antichrist. But I did not deny it, nor declare any opinion of my own: and many Protestants, and those very learned, are of opinion that he is not. It is true, I did not, I cannot approve foul language in controversies. Nor do I think that the calling of the Pope Antichrist, did ever yet convert an understanding Papist. And sure I am, Gabriel Powel's peremptoriness (to say no worse) in this point, did the Church of England no good, no honour in foreign parts: for there he affirms,\* "That he is as certain that the Pope is Antichrist, as that Jesus Christ is the Son of God, and Redeemer of the World." As for the thing itself, I left it free to all men to think as their judgment guided them; as appears by the licensing of Dr. Feaily's Sermons, where he proves the Pope, in his opinion, to be Antichrist; where he calls him also the Whore of Babylon. Which surely I should never have suffered to be printed, had I been her Pandar. And for bishop Hall, I only told him what king James had said, and left him to make what use he pleased of it.'

\* "Tarn certo scio Papam esse magnum illum Antichristum, quam Deum ipsum esse in Caelis Creatorem, et Jesum Christum verum Messiam." Gab. Pow. de Antichristo. Epist. ad Lectorem.

III. The third Charge was out of a Paper, which bishop Hall, about the time when he wrote his Book in defence of Episcopacy, sent unto me, containing divers Propositions concerning Episcopal Government. In which either he or I, or both, say, (for that circumstance I remember not) "That Church-Government by Bishops is not alterable by human law." To this I answered, That Bishops might be regulated and limited by human laws, in those things which are but incidents to their calling: but their calling, as far as it is Jure Divino, by divine right, cannot be taken away. They charge farther, that I say this is the doctrine of the Church of England. And so I think it is: for bishop Wilson set out a Book in the queen's time, intitled, The Perpetual Government. And if the government by bishops be perpetual, as he there very learnedly proves through the whole Book, it will be hard for any Christian nation to out it. Nor is this his judgment alone, but of the whole Church of England. For in the Preface to the Book of Ordination are these words: "From the Apostles time there have been three Orders of Ministers in the Church of Christ, Bishops, Priests, and Deacons." Where it is evident, that in the judgment of the Church of England, Episcopacy is a different, not Degree only, but Order from Priesthood, and so hath been reputed from the Apostles times. And this was then read to the Lords. And the Law of England is as full for it, as the Church: for the statute of 8 Eliz. cap. 1, absolutely confirms all and every part of this Book of Ordination: where also the law calls it, "The high estate of prelacy." And Calvin, (if my old memory do not fail me) upon those words of St John, ver. 20, 21. "As my father sent me, so send I you, &c." says thus upon that place, "Eandem illis imponit personam ac idem juris assignat." And if our Saviour Christ put the same person upon the Apostles, and assigned to them the same right which his Father gave him, it will prove a sour work to throw their successors the Bishops out of the Church, after 1600 years continuance; and in the mean time cry 'out against innovation.' For either Christ gave this power to his Apostles only, and that will make the gospel a thing temporary, and confined to the Apostles times; or else he gave the same power, though not with such eminent gifts, to their successors also, to propagate the same gospel to the end of the world, as St. Paul tells us he did, Ephes. iv. 11. Now all the Primitive Church all along gives Bishops to be the Apostles Successors; and then it would be well thought on, what right any Christian State hath (be their absolute power what it will) to turn Bishops out of that Right in the Church which Christ hath given them.

IV. The fourth Charge was an Alteration made in a Brief for a third Collection for the distressed Ministers and others in the Palatinate. The queen of Bohemia was pleased to do me the honour to write to me about this: and because two Collections had been before,

her majesty desired that this third might be only in London, and some few shires about it. I, out of my desire to relieve those distressed Protestants, and to express my duty to the queen, became an humble suitor to his majesty that this Collection also might go through England, as the rest had done. And it is acknowledged by all, that this I did. Now the witnesses which accuse me for some circumstances in this business, are two.

1. The first is Mr. Wakerly. He says, That Mr. Ruly (who was employed by the queen of Bohemia about this collection) was roughly used by me upon occasion of this Clause put into the Brief, and which, he says, I caused to be altered. This, first, is a bold Oath; for Mr. Wakerly was not present, but swears upon hearsay. Secondly, what kindness I shewed him and the business, is mentioned before; and if for this kindness he had been practising with Mr. Wakerly about the Brief, (as I had probable reason to suspect) I cannot much be blamed, if I altered my countenance towards him, and my speech too; which yet these witnesses (for the other agrees in this) have no reason to call rough carriage, only upon Mr. Ruly's unthankful report.

He says, that these words, "the Antichristian yoke," were left out. First, this is more than I remember; and the Briefs I had not to compare: nor is there any necessity that two Briefs, coming for the same thing, with some years distance between, should agree in every phrase or circumstance. Secondly, If I did except against this passage, it was partly because of the fore-recited judgment of king James, of which I thought his son king Charles ought to be tender; and partly because it could move nothing but scorn in the common adversary, that we should offer to determine such a controversy by a broad-seal. I remember well, since I had the honour to sit in this house, the naming of Tythes to be due *Jure Divino* cast out the Bill; a prudent Lord asking the Peers, whether they meant to determine that Question by an Act of Parliament. The other part of the Clause, which they say was altered, was, "The religion which we with them profess." Whence they infer, because "with them" was left out, that I would not acknowledge them of the same religion; which follows not: for we may be and are of the same religion; and yet "agree" not with them in those opinions, in which we differ from them. And Mr. Wakerly confesses that the words as altered are, "That they are persecuted for their religion," and their religion is the Protestant Religion, and so is ours. And therefore I could have no intention to make the religions different, but the opinions under the same religion.

'For Mr. Wakerly, he is a Dutchman born; and how far the testimony of an Alien may be of force by the law, I know not: And a bitter enemy to me he hath ever shewed himself, since I complained to the king and the lords that a stranger born and bred should be so near a Secretary of State, and all his papers

'and cyphers, as he was known to be to Mr. Secretary Coke. A thing which few states would endure. And how far the testimony of such a cankered enemy should be admitted, let the world judge. Admitted he was.'

2. The second witness was Mr. Hartlip. He acknowledges my improvement of the Collection, and my great readiness therein; which doubtless I should not have shewed, had I accounted them of another religion. He says, There was no Alteration but in that Clause; and that implies a manifest difference. But that is but in his judgment; in which I have already shewn that Wakerly is mistaken, and so is he. Beside, he comes here as a witness of the fact, not as a judge of my intentions or thoughts. He adds, that, if he remember well, the alteration was drawn by me. But if he do not remember well, what then? Surely here is no evidence to be grounded upon it. Here, upon the point of Antichrist, Mr. Nicolas stiled me as before, and was furious till he foamed again. But I saw a necessity of patience. Mr. Browne also in his summary Charge followed this business close: But I gave it the same Answer.'

5. The fifth Charge, and the last under this Article, was the calling in of a Book, anno 1637, shewing the doctrine and discipline of the Church in the Palatinate; but called in only because against Arminianism. The single witness Michael Sparks. He says this Book was called in; but he knows not by whom, nor mentions he for what. But he says the pursuivants which searched for it were mine. He means such as belonged to the High-Commission; for other than such I had none. And there was cause enough for calling in the Book, without thinking of Arminianism.

'But what is the reason why here is nothing urged against me about abrogating the immunities and privileges of the French and Dutch churches, which fill the body of this Article? Why, I conceive there may be two reasons of it. One, because there was taken by Mr. Prynne, among other Papers for my defence, a Letter under queen Elizabeth's own hand to the lord Pawlet, marquis of Winchester, then Lord Treasurer; in which she expresses her willingness that those strangers, distressed in and for point of conscience, should have succour and free entertainment; but should conform themselves to the English Liturgy, and have that translated into their own language. And they knew I would call to have this Letter produced, proved, and read. And had this Letter been stood unto, they had never been able to do the church of England half the harm they have since. The other was, because they found by their own search against me, that all which I did concerning those churches was with this moderation; that all those of their several congregations in London, Canterbury, Sandwich, Norwich, or elsewhere, which were of the second descent, and born in England, should repair to their several parish-churches, and conform them-

“selves to the doctrine, discipline, and liturgy of the Church of England; and not live continually in an open separation, as if they were an Israel in Egypt, to the great distraction of the natives of this kingdom, and the assisting of that schism which is now broke forth. And as this was with great moderation, so was it with the joint approbation of his majesty and the lords of his council, upon the reasons openly given and debated. And all this before I proceeded to do any thing; as appears *apud Actu.*”

Then they went to the Thirteenth Original Article; which here follows.

XIII. “He hath traitorously and wickedly endeavoured to reconcile the Church of England with the Church of Rome: And for the effecting thereof, hath consorted and confederated with divers Popish Priests and Jesuits; and hath kept secret intelligence with the Pope of Rome: And by himself, his agents and instruments, treated with such as have from thence received authority and instruction. He hath permitted and countenanced a Popish Hierarchy or Ecclesiastical Government to be established in this kingdom. By all which traitorous and malicious practices this Church and Kingdom have been exceedingly endangered, and like to fall under the tyranny of the Roman see.”

The Seventh Additional Article.

“That the said Archbishop at several times within these ten years last past, at Westminster, and elsewhere within this realm, contrary to the known laws of this land, hath endeavoured to advance Popery and Superstition within the realm: And for that end and purpose hath wittingly and willingly received, harboured, and relieved divers Popish Priests and Jesuits; namely, one called Sancta Clara, alias Dampport, a dangerous person and Franciscan Friar: who having written a popish and seditious book, entitled, “*Deus, Natura, Gratia*,” wherein the Thirty-nine Articles of the church of England, established by act of parliament, were much traduced and scandalized; the said Archbishop had divers conferences with him while he was writing the said book: and did also provide maintenance and entertainment for one monsieur St. Giles, a Popish Priest, at Oxford, knowing him to be a Popish Priest.”

I. The first Charge (they say) was to be laid as a foundation; and it was, That I was generally reputed a Papist in heart, both in Oxford, and since I came thence.

1. The first witness for this was Dr. Featly. He says, There was such an opinion of me thirty years since there. But he says, he never heard any popish opinion maintained by me. So here is nothing of knowledge. And if I should say, that above thirty years ago there was an opinion that Dr. Featly, then in Oxford, was a Puritan, this could make no proof against him. Nor can his saying that I was reputed a Papist, make any proof against me.

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He says farther, That one Mr. Russel, who had been bred in St. John's-College, told him in Paris, that I maintained some catholic opinions. First, Mr. Nicolas would have it that this Mr. Russel was my scholar: But the whole college can witness it is not so; nor had he ever any relation to me in the least degree. After his father's death he left the college, and went beyond sea; where the weak man (for such he was) lost his religion. Secondly, Dr. Featly says expressly, that Mr. Russel said I was no Papist; which, for the countenance of his own charge, he would never have said, had he thought me one. Thirdly, If he did say that I maintained some catholic opinions; yet he named none, by which there might be trial and judgment whether they were such or no, in the sense he meant them. Lastly, Mr. Perkins, in his Reformed Catholic, sets down divers opinions in which they of Rome and we agree: Shall he be a Papist for this? Or shall not that which is lawful for him, be as lawful for me?

2. The second witness was one Harris. He says, That Mr. Ireland (who was some time student of Christ-Church in Oxford, and after schoolmaster at Westminster) told him that I would leave the church of England. This is a bare report from Mr. Ireland, with whom I never had any acquaintance, nor was scarce in his company twice in all my life. Nor is it in my power to hinder what Mr. Ireland will say, or Mr. Harris from him. He says, That one that called himself Leander, came over on purpose to make this reconciliation. If he did, (which is more than I know or believe) I think he would hardly make such a one, as Harris is reported to be, acquainted with it. But howsoever, if he did come with that purpose, was it in my power to hinder his coming? And here is no proof offered that I did help on his purpose, or so much as know of it. He says he often petitioned me for relief, but had none. It may be; I well knew he deserved none: And your lordships know, that by law I might not afford him any. Had I given him any, I should now have heard it with both ears. For I am informed he is a priest, and condemned in a *Præmunire*, and was let out of prison on purpose to be a witness against me. And having set that which is aforesaid, under his hand, is now slipped away, and gone. Who got him out of prison for this good purpose, I know not; but sure somewhat there is in it, for your lordships see his testimony is now read, but he appears not.

3. The third Witness was sir Nathaniel Brent (now absent, but came in the next day). He says, I was esteemed popishly-affected in Oxford; and he gave three instances very carefully to prove it. The first was, That in the Divinity-School there, I maintained the necessity of Baptism. I did so; and my predecessor Archbishop Abbot was then Vice-Chancellor and present, and approved my opinion, and my Grace passed for my degree to be Bachelor of Divinity, without any one man's opposition. He says, that Mr. Dale

of Merton college then shewed him all my Supposition taken out of Bellarmine. This is a bold and dangerous Oath: He might swear that Mr. Dale shewed him in Bellarmine, that which he said was my Supposition; but that he shewed him all my Supposition there, is a strange oath for a man of learning and law to make, in such a presence. Besides, I have my Supposition, which I then made, yet by me; and if my tenet of that question be the same with Bellarmine's, or that there be any line taken out of him, but what I cite for my own advantage against him, I will utterly forfeit my reputation of any learning to your lordships. His second instance was, that I was acquainted with one Mr. Brown, Fellow of Corpus-Christi-college in Oxford, who was suspected to be a Papist, and after his death proved to be one, by a Book that was found in his study, proving that a man might be a Roman Catholic, and yet go to church, and conform in England. I was acquainted with this man; he was a very good scholar, and an honest man, and a good protestant, for aught I know. For the tract found after his death among his papers, that is no proof: for scholars get all the papers they can, especially such as belong to their own profession. And the more strange the opinions are, the more do they labour to get them. Nor is it any proof that the Tract was of his making, because written in his own hand, as it is urged. For the argument being so foul and dangerous, it could not be safe for him, nor any way fit, to commit it to any other to write for him. Nor is there any proof that I knew he had such a tract by him; neither indeed did I. The opinion is very base and unworthy, and was first broached by the Jesuit Azorius, [Instit. Moral. p. 1. l. 8. c. 27.] and it seems some of the fellows had enlarged him, and made this Tract out of his principles. His third instance was, That I petitioned king James in this business. I was complained of to king James by a great person, that I had inward acquaintance with this man. Hereupon, my waiting month being June, and not long after the complaint made, I took occasion in my first Sermon to confute this opinion, and then petitioned his majesty that it might be examined, that such an imputation might not lie upon me. His majesty referred it to the Lord Archbishop of Canterbury, Bishops of London, Winchester, and Duresme; where, after full Examination, I was acquitted.

II. The second Charge was, that the same Opinion was held of me beyond the seas, that I was a cunning promoter of the Roman cause. And here the witnesses are the same which were produced before; Mr. Challoner, who told over his old tale again of I know not what Plot he heard from a Jesuit: nothing but hearsay at the best. And it savours like an Almanack *de post facto*, 'or rather of some-what else, which I will spare to name, because he is upon his oath.' The other witness is Mr. Anthony Mildmay, who also tells

over his old tale of his father Fitton. But he was out of the way again, and appeared not till the next day, with sir Nathaniel Brent. So here is a repetition again of the same witnesses, and same things to multiply the noise. 'Only noble sir Henry Mildmay appeared not the second time; but whether it were because he had enough at his first appearance, or whether his face was scratched then (as since men say 'it was), I cannot tell.'

III. The Third Charge was, That I had a damnable Plot, to reconcile the church of England with the Church of Rome. If to reconcile them with the maintenance of Idolatry, it were a damnable Plot indeed. But if Christian truth and peace might meet and unite together, all Christendom over, were that a sin too? Were I able to plot and effect such a reconciliation, I would think myself most happy, whatever I suffered for it. But how is this damnable Plot proved? Pope Gregory writ a Letter to his Nuncio in Spain, and a Letter also to king Charles; which Letter is printed: Copies of these Letters were found in my study. Could I hinder the Pope from writing to whom he pleased? Shall not I get copies of any Letter I can, to see what practising is abroad for private interest? Shall it be lawful for all my predecessors to get and keep copies of such Letters by them, and shall it be unlawful for me only? And here I produced Mr. Dobson, an ancient servant to my predecessors, who witnessed that Archbishop Bancroft had store of them, and kept them all his time. Nor do I know, how this Charge can fall upon me: for there is no one word in any of the Letters produced, that reflects upon me, or any Plot of mine. Nor indeed had I ever any such to reflect upon.

IV. The fourth Charge is, That I had a hand in the Plot for sending the king, when he was prince, into Spain, to be perverted in his religion. They follow their proof of this out of my Diary; And they begin with my friendship with the lord duke of Buckingham, who waited on the prince in this journey. And first they urged my Diary at June 9, 1622, where I mention, that there were then particulars, which are not for paper. But the words, which lead these in, were his entrance upon a near respect to me, the particular expressions whereof were not for Paper; Nor word, nor thought, of either Plot or Popery. Then they urged June 15, 1622, where it is said, that I became C. that is, Confessor to the lord duke. First, If my lord duke would honour me so much as to make me his confessor, as I know no sin in it, so it is abundantly proof, that the passages before-mentioned were not for paper. Should I venture them so, there is never a person of honour present, but would think me most unworthy of that trust. Next, they pressed June 13, 1623, where I confess, that I received Letters from my Lord Duke out of Spain. I did so; and I then held it great honour to me, and do so still. But then, and long

before, it was known to all men whither he was gone, and with whom; nay, it was commonly known to all men of quality hereabout within three or four days; And till it was so commonly known, I knew it not. Yea, but then they inforced out of Feb. 17, 1622-3, That the prince and the marquis of Buckingham set forward very secretly for Spain. And Feb. 21, That I writ to his lordship into Spain. It is true, they went away that day, and very secretly; but I neither did, nor could set it down, till afterwards that I came to know it. And then so soon as I came to know it, which was about the 21st, I did write. To these was cunningly (how honestly let all the world judge) pieced a passage out of a Letter of mine to bishop Hall. But that Letter was read, at my humble motion to the lords, and the date of it was in 1634, so many years after this business of Spain. And the passage mentioned, was only about king James's manner of defending the Pope to be Antichrist, and how he salved it while the prince was in Spain. But king James related it after. Nor could any words of that Letter be drawn to the king's going thither, much less to any knowledge I had of it.

V. The fifth Charge was concerning his majesty's Match with France. And here again they urge my Diary at March 11, 1625, That the duke of Buckingham was then and there employed. And at May 19, and 29, That I then writ Letters to him. First, my Lords, I hold it my great honour, that my lord duke would write to me, and give me leave to write to him. Secondly, I have committed some error in these Letters, or none. If none, why are they charged? If any, why are they not produced, that I may see what it is, and answer it?

VI. The sixth Charge was, That I was an Instrument of the Queen's. This they endeavoured to prove by my Diary in three places. First, at August 30, 1634. Upon occasion of some service done, she was graciously pleased to give me leave to have immediate access unto her, when I had occasion. This is true, and I most humbly thanked her majesty for it: for I very well knew what belonged to addresses at second-hand in court. But what crime is in this, that the Queen was pleased to give me access unto her, when I had occasion? Here is no word of Religion. Secondly, at May 18, 1635, where it is said, 'That I gave her majesty an account of something committed to me. If her majesty sent or spake to me to do any thing, as it seems she did, shall I want so much duty, as not give her an account of it? So be-like I must be unmannerly with her majesty, or lie open to no less than a Charge of High-Treason. Thirdly, at April 3, 1639, it is made a great matter, that I should then dispatch a great business for the Queen, which I understood she would not move for herself: and that for this her majesty gave me great thanks. Mr. Nicolas's inference upon this was, that

they conceive wherefore. But his conceit makes no evidence: he must not only conceive, but prove wherefore, before it can work any thing against me. As for Iteligion, as there is no word of it in my Diary, so neither was it at this time thought on. Her majesty would therein have moved for herself: but it seems it must be a crime, if I be but civil and dutiful towards the Queen, though it be but thrice mentioned in so many years.

VII. The seventh Charge was, That I forbade ministers praying for the Queen's Conversion, and punished others. The first witness, Mr. Ratcliff, says, That sir Nath. Brent gave it in charge at Bow Church in my Visitation. The more to blame he, if so he did. Yea, but he says, it was by my command delivered unto him by sir John Lambe. Was it so? How doth Mr. Ratcliff know that? He doth not express. He was not present, when I spake with sir John Lambe. And if sir Nath. Brent told him of it, it is but hearsay. And sir Nath. having been so ready a witness against me, why is he not examined to this particular? And as for the Paper which was shewed, it appears plainly there, that it was no Paper of Instructions sent to my Visitors by me, but of particular informations to me: of which one was, that the Queen was prayed for in a very factious and scandalous way. And this appeared, when that Paper was read. And this I referred to my Visitors, as I not only might, but ought: not forbidding the prayers, but the scandalous manner of them. The second Witness was Mr. Prynne; who says, That one Mr. Jones was punished for praying for the Queen. He was punished in the High Commission for scandalous abusing the Queen, under a form of praying for her, and for divers other Articles that were against him. 'And this Answer I gave to Mr. Browne, who forgot not this in 'summing up my Charge.'

VIII. The Eighth Charge was, That I punished men for praying to preserve the Prince. No; God forbid! The High Commission Book was shewed, and that there in the year 1634, one Mr. Howe was censured for it. I got this Act of the High Commission to be read to the Lords: His Prayer went thus, "That God would preserve the Prince in the true Religion, of which there was cause to fear." Could this Prayer have any other operation upon the people, than to make them think his majesty was careless in the education of the Prince, especially in point of religion? And this was so grievous and graceless a scandal cast upon a religious king, as nothing could be greater. Upon the matter, it was the shew of a Prayer for the Prince, but was indeed to destroy the king in the hearts of his people. And had I not there consented to his punishment, I had deserved to be punished myself. 'Mr. Browne, when he repeated the sum of the Evidence, laid this Charge upon me, but spake not one word, to my remembrance, of this Answer given to it.'

IX. The ninth Charge, That I did extol queen Mary's days. The Proof for it was taken out of the Preface to the Statutes of the University of Oxford. I took a great deal of pains about those Statutes, and might justly have expected thanks for it, not such an accusation. But as for the Preface, it was made and printed at Oxford: I meddled not with it. I could trust the University with little, if not with making of a Preface. If they have done any thing amiss in it, let them answer it. The passage was about certain offers made to amend those confused old Statutes, both in Edward 6th's and queen Mary's days; but no effect came of the pains then taken; "Recruduit labor," says the Preface. So that this I can answer for them: there is not a word spoken of Religion, but of Manners only, and that as much in relation to the times of princes following, as hers. For the words, to my remembrance, are, "interim optanda temporum felicitate," &c. And that "interim" cannot be restrained to queen Mary's days only, but must include the whole "interim," or middle distance of time, to that present in which I settled the body of their Statutes; that is, all queen Elizabeth's and king James's days, which I think no man can deny was "Optanda temporum felicitas."

X. Here Mr. Nicolas confessed there was no downright Proof against me. That was his phrase: but he added, that was not to be expected in such a work of darkness. Then he produced a Paper found in my Study, printed at Rome. So were divers of my books printed there: what of this? They may print what they will at Rome, I cannot hinder it: and I may have and keep whatever they print, no law forbidding it. Then he shewed a Letter sent unto me from Mr. Graves. The gentleman is at this present fellow of Merton College in Oxford, a great traveller, and a man of great worth. As far as I remember, his Letter came to me from Alexandria. It was fit to be sent, and kindly received; as by me it was. I desired it might be read. Then were mentioned sir William Boswell's Letters, and the Papers sent by Andreas ab Habernfeld, about a great Plot to destroy the king and religion, and that I concealed these Papers. 'I might have been amazed at the impudence of this charge above all the rest: "Diaboli inpucentia," the Devil's impudence, and no less, as St. Augustine speaks in another case.' [S. Aug. Epist. 167.] Did I conceal these Papers? First, the same day that I received them, I sent them by an express to his majesty. I had a speedy answer from his majesty, and that I returned with equal speed to his majesty's agent sir William Boswell, as I was commanded. And this Mr. Prynne and Mr. Nicolas knew: for Mr. Prynne took all these Letters and Papers from me, when he searched me at the Tower; and out of them made his book\* called Rome's Master-

Piece: excepting the slanders, which he hath juggled in of his own. So soon as his majesty came home, I humbly besought him, that he would be pleased to appoint a time, and call some lords to him, to hear and examine the business: and this examination continued till I was committed. What was after done, I cannot account for. Besides, my Lords, it appears by those Papers, that my life was sought for, because I would not give way to the change of religion; and Mr. Prynne himself hath printed this: and yet now Mr. Nicolas, from his testimony, presses these Papers against me. But the king, and the Lords, and both secretaries of state then present, can witness, that I took all the care and pains above-mentioned to have it sifted to the bottom. 'Notwithstanding all this, Mr. Nicolas falls upon this Plot again upon the next day of my Hearing, as if nothing had been said unto it: and was so shameless as to say, That I followed this business, so long as I thought the Plot was against the Puritans; but so soon as I found it was against the Papists, I kept it secret, till Mr. Prynne discovered it in his search of my Papers. Where, first, there is no word in all the Papers to make me or any man think the Puritans were concerned in it. And, secondly, I did not sleep upon the receipt of these Papers, till I had sent them to his majesty. But I had reason to keep the Papers as safe as I could, considering how much they justify me against these foul calumnies put upon me.'

XI. Then followed the Charge of Sancta Clara's Book, alias monsieur St. Giles: so they expressed it; and I must follow the way they lead me.

1. First, then, they charge, that I had often conference with him, while he was writing his Book, intitled, "Deus, Natura, Gratia." No, he never came to me, till he was ready to print that Book. Then some friends of his brought him to me. His suit then was, that he might print that Book here. Upon speech with him, I found the scope of his Book to be such, as that the Church of England would have little cause to thank him for it: and so absolutely denied it. Nor did he ever come more at me after this, but twice or thrice at most, when he made great friends to me, that he might print another Book, to prove that Bishops are by Divine Right. My answer then was, that I did not like the way which the Church of Rome went, in case of Episcopacy. And howsoever, that I would never give way, that any such Book should be printed here from the pen of a Romanist; and that the Bishops of England were

whereof being by his endeavours conveyed to the Archbishop, then a prisoner in the Tower, the Archbishop wrote Notes in the margin of it, so far, and so much, as to vindicate himself from the aspersions laid upon him therein. This Copy, with the said Notes, is now in the hands of that knowing and learned antiquary Mr. Anthony Wood.

\* This Book was published by Prynne in the year 1643, in five sheets in quarto. A Copy

able to defend their own cause and calling, without calling in aid from Rome, and would in due time. Maintenance he never had any from me, nor did I then know him to be a priest. Nor was there any proof so much as offered in contrary to any of this.

2. Secondly, they did specially except against a passage in the Licenser, and another at the end of the Book. The Book was printed at Lyons, where I could not hinder the printing, either of the whole, or any part. This might have been something, had I licensed it here; but that I constantly denied.

3. Thirdly, they produced a Letter written to me from Venice, by one Mr. Middleton, chaplain there to the right honourable the now earl of Denbigh, his majesty's ambassador. Therein he writes, "that S. Clara was *homo nequissimus*, and that one Monsieur S. Giles was the author of that Book." That Clara and S. Giles were the same person, is but Mr. Middleton's opinion. Such news as he there heard, some true, some false, he thought fit to write unto me: and he being absent, here's no proof upon oath, that they are one and the same person. And I hope a young man's Letter from Venice, or any other place, signifying only such things as he hears, shall not stand for good evidence in a case of life. And he was mainly deceived in this particular, as appears, first, because what Clara is, I know not: but Monsieur S. Giles is a great scholar, and a sober man: and one that gave the late lord Brook so good content, that he allowed him 100*l.* a year during his life. Secondly, because 'tis commonly known that Clara is an Englishman, and S. Giles a Frenchman born and bred. Thirdly because their own Article, upon which they bring this Charge, acknowledges them two distinct persons. Fourthly, because both Mr. Prynne and Mr. Nicolas had Monsieur S. Giles before them in examination, and could not but know him to be a Frenchman: as appears by a Warrant given to him by Mr. Prynne, to secure him after his examination; which Warrant follows in these words:

"These are to certify those whom it may concern, That the Committee of the House of Commons, appointed to prosecute the Archbishop of Canterbury, have examined and received satisfaction from Monsieur S. Giles, a domestick servant to the Resident of Venice; and therefore he is no farther to be examined or molested concerning the same."

'This licence came to my hands since my answering was passed, so I could not then shew it. Monsieur S. Giles was never the man that gave me notice of any of this, not so much as that he had been examined; but my secretary Mr. Dell came to hear of it by chance, and went to him, and had this Copy (with some labour) from him, and will make oath it is a true Copy. This is not the thankfulness part that ever S. Giles played, considering my carriage towards him.

4. Then they charged upon Monsieur S. Giles directly, that I knew him to be a priest,

and yet maintained him at Oxford. The case\* was this: Mr. S. Giles was in good place about the queen's majesty at her first coming: Here he did so good services to this state, that he lost himself in France, and durst not go thither when the French were sent away. All this while the man was unknown to me, till his majesty one day at St. James's told me this, and that he was a priest, and that it lay upon him in honour to allow him some maintenance, and prescribed me a way how to order it, that he might receive one hundred marks a year as from him; and gave me charge, if the pension were at any time behind, I should acquaint him with it. After this Mr. S. Giles, by his friends, petitioned his majesty, that being a stranger, he might live in Oxford, to have the use of the library there, being resolved to meddle no more with the controversies of the time, but to apply himself to metaphysical learning. His majesty was desirous to have him placed in some College, to save charges: But this I most humbly deprecated, because it might be dangerous to the youth there, and scandalous to his majesty, the church, and the university; and dangerous to myself, being Chancellor: to the rest I submitted. So he was left to place himself in some town-house, as he could: And for this his majesty gave me his Warrant, which Mr. Prynne, in his search, took from me. But here follows the true copy of it.

'C. R. Canterbury; Mr. S. Giles, by serving us and this state, hath lost all his hopes in France, and desires to spend his time here at his private studies. I would have you think upon some way for his maintenance, and to place him in Oxford, that he may have use of that Library, which he much desires. And you may so order it, that his Profession in Religion may do no harm.'

And according to this direction of his majesty I did take order, but with assurance from himself, and with spies upon him there, besides the special care of the Vice-Chancellor, that he should not converse with young students, nor exercise his priestly office, nor do any thing against the laws. Nor did I ever hear that he failed in any of these assumptions.

5. Then they produced one Mr. Broad, who testified, That while S. Giles lived at Oxford, some Doctors came to him. Doctors were able to deal well enough with him; but all resort of young scholars was forbidden. He says farther, That Mr. S. Giles should say, That the bishops of England were cordially of his religion, but that he feared their rigour would spoil all. First, This is but a report of his speech. Secondly, Why was not S. Giles at his examination asked, whether he said it or no? And if he did, what ground he had for it?

\* The Archbishop related this case more at large, and therewith defended himself in a written Paper; which being seized by Prynne in the Tower, was now produced and read before the Lords. It may be found in Prynne's Comp. Hist. p. 428. H. W.

At the most, it was but his opinion of the bishops, who were never the more cordial to Popery for his thinking so. 'And thirdly, I doubt it appears by this time, that all is overthrown, or near it, not by the rigidity, but by over-remissness of some bishops, who never would believe any danger could come from the Godly, as they were called.'

6. Lastly, What is the reason of this great endeavour, upon nothing but news in a letter, to make Clara and Mr. S. Giles to be one and the same man? 'Doubtless, nothing but an hydropical thirst after my blood.' For resort of priests to Lambeth was usual in both my last predecessors times, Bancroft's and Abbot's, and some lay in the house, and had relief. This was proved to the lords by two ancient servants of that house: Neither of which have been done in my time. Archbishop Abbot made a Warrant, this Warrant was shewed, to secure Mr. Preston, an English priest, upon command of king James: Why may not I a French one, by the warrant of king Charles? King James justified bishop Bancroft for doing this, when he was bishop of London, and no privy-counsellor: And may not I do it, being archbishop and privy-counsellor, with as much privacy of the king and the state, as he did? But to let these pass, why should I say here was a thirst for blood? I will tell you why? The statute of 27 Eliz. makes it felony, without benefit of clergy, to maintain or relieve any Romish priest born in England, or any other of her majesty's dominions, knowing him to be such. Now they had laid their Article, That I had given maintenance to one Monsieur S. Giles, a popish priest at Oxford, knowing him to be such. But when, upon examination of S. Giles, they found him to be a Frenchman, and so not within the statute; (as the words of that statute are most plain, and so is sir Edward Coke's judgment upon them; [L. 3. Inst. c. 37.] both which I then read to the lords:) I say, when they saw this, then they cast about how to make \* S. Clara and Mr. S. Giles to be one man. And though they could find no shadow of proof of a thing that is not, but a Letter of News from Venice; yet against their own knowledge and conscience, they give that in evidence to reach my life any ways.

Here Mr. Nicolas, so soon as he had discovered whither I tended, would have broken me off, saying, They did not urge it for that now, they were not yet come to it. I replied, if they came to it after, I would be at the pains to answer again: But since it concerned my life, I would not slip it now, nor leave it unanswered in any circumstance. So I went on,

\* After all Prynne would insinuate, that S. Giles was the same man with Sancta Clara, and wrote the Book intitled, *Deus, Natura, and Gratia*, although he fully knew the contrary, Compl. Hist. p. 427, 429. Nay, he hath the confidence at last (p. 430.) to add, that "it is most apparent." H. W.

but they never mentioned it after; and by this way meant certainly to have involved me within the law, Clara being an Englishman born. 'God of his mercy grant, that this thirst after my blood lie not too heavy another day upon their souls! Mr. Browne in summing up the charge fell upon this also. I made a brief Answer out of that which is aforesaid; Yet after in his Reply, he fell upon this Letter of Mr. Middleton's, and cites his news for evidence, That S. Clara and Mr. S. Giles were the same man: Which I much wonder so able and grave a man as he is should swallow from Mr. Prynne, who doubtless, being present, was angry to see himself so laid open in the house of commons.'

XII. At last came in the last Charge of this day, That a Cardinal's Hat was offered unto me. My Diary quoted for this, at Aug. 4, and 21, 1633. I could hinder no offer, unless I could prophesy what each man came about, and so shun them. But why is not my Answer, there set down, expressed too? My Answer was, "That somewhat dwelt in me, which would not suffer me to accept that till Rome were other than now it is." Besides, I went presently to his majesty, and acquainted him with it; which is all that the law requires at my hands. [Coke, L. 3. Inst. c. 3.] And his majesty very prudently and religiously, yet in a calm way, the persons offering it having relation to some Ambassador, freed me speedily of that, both trouble and danger. They urged farther out of the papers of Andreas ab Habernfield, which Mr. Prynne took from me in his search, That signior Con had power to offer me a Cardinal's Hat. The words which they cite, are, for I could never get sight of those Papers since, "*mandatum habuit offerre, sed non obtulit.*" What power he had to make me such an offer, I know not, but themselves confess he did not offer it. Nor had I ever any speech with him during all the time he staid here. I was solicited as much by honourable friends to give him admittance to me at Lambeth, with assurance he should speak nothing about religion, as ever I had about any thing in my life. I still refused, and could not persuade myself to do other; and yet could not but inwardly (*in verbo sacerdotis*, this is true) condemn myself of gross incivility for refusing; for which yet now I see I am much bound to God for that unmannerliness. Had I held a correspondence with him, though never so innocent, where had I now been? Besides, I would not have it forgotten, that if to offer a Cardinal's Hat, or any like thing, shall be sufficient cause to make a man guilty of Treason, it shall be in the power of any Romanist to make any English bishop a traitor when he pleases: a mischief not to be endured. And thus this long and tedious day ended: and I had order to attend again on July 24, which I did accordingly.

*The Nineteenth Day of my Hearing.*

I. Monday, July 24, 1644. This day they

went on with the same Article; And the first Charge was, my denying the Pope to be Antichrist. The proofs, the alteration of the clause in the letters patents for the Palatinate, and the letters between bishop Hall and me. These proofs are answered before, and repeated here only to make a noise. Nor did I in any of these deny the Pope to be Antichrist: For, to forhear that word, for some both temporal and ecclesiastical respects, is one thing; and to deny the thing itself, is another.

II. The second consists of a great many particulars, and most of them urged before, repeated only to help to make the ignorant clamorous and wild against me. God forgive them this practice!

1. The first particular was Shelford's Book: The whole Book. And Mr. Prynn very gravely said, that this Book, and the other two following, were found in my Study. Is he not yet ashamed of this argument? May I have no Book in my Study, but I must be of the same judgment with the author in all things? The author is altogether unknown to me; the Book was licensed at Cambridge: so nothing faulty in me, but the having of the Book in my Study.

2. The second was Dr. Heylin's Book against Mr. Burton. This Book was printed by my command, they say, and in it is a passage for Absolute Obedience to Kings, p. 229. This was before also. And I did command the printing of the Book, but gave no warrant to put any thing unjustifiable into it. This passage I caused to be read to the Lords; and the Doctor there says no more than what he learned of king James in the Conference at Hampton-court. But if any thing be amiss, he is ready to answer it: but I find not one word in him, that this Absolute Obedience ought to be in any thing that is against law. 'That is one of Mr. Nicolas's stretches.'

3. The third particular is bishop Montague's Appeal, p. 141. But nothing hence charged upon me, but only, that the Book was found in my Study. I would Mr. Prynn could find any books there now.

4. The fourth was, That divers Books of like nature were licensed by my chaplains. But none was of all they then named, but Dr. Heylin's and Sales, of which your lordships have heard the Plot how it came to be licensed. And for Dr. Heylin, he is ready to make all good, which he hath therein done.

5. The fifth particular is, That the Homilies which are authorized in the Church of England, make the Pope Antichrist, p. 216. And the Babylonish Beast of Rome, p. 316. But, first, this is nothing against me, till it be proved, which yet is not done, that I have positively denied the Pope to be Antichrist. And, secondly, I do not conceive, that the Article of the Church of England which confirms the Homilies [Art. 35], doth also confirm every phrase that is in them. Nor, thirdly, do I conceive that the Homilies in those places which are cited, do make the Pope the great

Antichrist. For in the first place, the words are, "to the beating down of sin, death, the Pope, the Devil, and all the kingdom of Antichrist." Which words cannot possibly imply, that the Pope is that Antichrist. In the second place, he is only called the Babylonical Beast of Rome; which phrase doth not necessarily signify the great Antichrist. For the Beast so often mentioned in the Revelation (chap. xi. 7), is no where called the Babylonical Beast of Rome. And if that Beast do stand for the great Antichrist, I say, *if*, because those scriptures are very dark, then the Beast is primarily the Roman empire in the judgment of the Geneva Noters. 'And that there should be two great Antichrists, is more than any man hath yet said. Here Mr. Nicolas was up again with Pandar to the Whore of Babylon, and other foul language; not remembering all this while, (which yet I was loth to mind him of) that one of his zealous witnesses against the Whore of Babylon, and all her superstitions, got all his means, which are great, by being a Pandar to other lewd women; and loved the business itself so well, as that he was, not long since, men say, taken in bed with one of his wife's maids. Good Mr. Nicolas, do not dispense with all whores, save the Whore of Babylon.'

6. The sixth particular was the Articles of Ireland, which call the Pope the Man of Sin. But the Articles of Ireland bind neither this Church, nor me. And some learned Protestants do not understand that noted place of the Apostle, 2 Thes. ii. as meant of Antichrist or the Pope.

7. The seventh and last particular is a repetition of Sancta Clara and Mr. S. Giles, and the Letter of News, which were news indeed, to make them one man; though this were answered at large but the last day, and sir Ed. Hungerford's testimony brought up again. It is a sign Mr. Nicolas hath indeed no downright proof, as he said before, that so tumbles up and down in repeating the same things.

III. The third Charge is, That I say in my Book [contra Fisher, p. 376], that the religion of the Church of Rome and ours is all one. This is spoken only in opposition to other religions, in regard of Christianity. The words are, "Nor do the Church of Rome and the Protestants set up a different religion; for the Christian religion is the same to both," &c. And the like passage to this is in my speech in the Star-Chamber, and these passages were read to the Lords. So that either Papists must be denied to be Christians, or else this Charge can work nothing against me.

IV. The fourth Charge is out of Chouneus's Book, p. 45, & 46, licensed by my Chaplain Dr. Bray; where, they say, it is said, "That Rome is a true Church, and differs not in fundamentals." And that at the High Commission, when this Book was questioned by some, I did say, "That the Church of Rome and the Protestants did not differ in fundamentals, but

in circumstances." And this latter part was testified by Mr. Burton and one Mr. Lane, who said they were present. First, Suppose this be false, and that they do differ in fundamentals, yet this then is but my error in divinity, no practice to overthrow religion. Secondly, I suppose, if I did so say, I did not err: for the foundations of the Christian Religion are the Articles of the Creed; and the Church of Rome denies no one of them. Therefore there is no difference in the fundamentals. If they of Rome differ in exposition of some of these, that must needs be a superstructure upon or beside the Article, not the Article or foundation itself. Nor did I follow my own judgment herein, but Calvin's,\* who says expressly, "That in despite of Antichrist, the foundations of the Church remained in the Papacy itself, that the Church might not wholly peri-h." And this passage was then read to the Lords. Thirdly, these two learned witnesses, as they would be reputed, are quite mistaken in their very terms: for they report me, as if I said, "Not in fundamentals, but in circumstantialia;" whereas these are not *membra opposita*, but fundamentals and superstructures, which may sway quite beside the foundation. And this, though not the only, yet is a main failing in the Roman fabric; in which many things are built upon unwarrantable tradition, as is expressed in my Book at large, and their many superstitutions named: and that passage read also to the Lords. For though they differ not in the prime foundations, yet they in many things grate close upon them, and in some things fall beside them, to no small hazard of their own souls. As for circumstantialia, it seems these men have forgotten, or never knew, that many times circumstantialia in religion do quite destroy the foundation. For example: The circumstances are these: *Quis? Quid? Ubi? Quibus auxiliis? Quomodo? Quando?*

1. *Quid?* What man believes; and that contains Fundamentals, and in the first place,

2. *Ubi?* Place, a mere circumstance; yet to deny that Christ took our flesh of the Blessed Virgin, and that in Judea, denies the foundation, and is flat Judaism.

3. *Quibus auxiliis?* By what helps a man believes, and in some measure obeys as he is commanded? For to believe that a man doth this by the strength of nature only, and not by aid and assistance of Grace, is with the Pelagian to deny the foundation, and to overthrow the grace of Christ.

4. *Quando?* When? That is time, a mere circumstance: yet to deny that Christ is already come in the flesh, denies the foundation utterly, and is flat Judaism, and an inseparable badge of the great Antichrist, 1 John iv. 3.

\* "Quemadmodum sæpe diruuntur ædificia, ut fundamenta et ruine maneat; ita non passus est ecclesiam suam ab Antichristo vel a fundamento subverti, vel sole æquari, &c. sed ab ipsa quaque vastatione semirutum ædificium superesse voluit." Calv. l. 4. Inst. c. 2, § 11.

And in the case of the Resurrection, to say it is past already, (which is time) St. Paul tells us, 2 Tim. ii. 18, is no less than "the overthrow of Faith." And the rule is general, That some circumstances *dant speciem*, give the very kind and form to a moral action. [*Aliqua circumstantia dant speciem actui morali*. Tho. 1, secundæ, q. 73, A. 7, ad primum.] 'This for 'their ignorance: but for the malice of their 'oath, I leave them to God's mercy. 'Here 'Mr. Browne, when he summed up the Evidence against me, fell upon this; and said, 'That when I gave divers instances what dangerous errors circumstances did sometimes breed in religion, I gave no instance in any point of Popery. But to this I answered, 'first, That it was not material what instances 'I made, so I was able to make some. Secondly, That it was not possible for me, or perhaps a readier man, to have all instances so present with his memory. Thirdly, If an instance in Popery, rank Popery, will serve the turn, you may take it in Transubstantiation. That is either a fundamental point, or it is not: if it be not fundamental, why did the Papist put the Protestant to death for it? And why did the Protestant suffer death? If it be fundamental, as it seems by both sides it was accounted, it is upon the bare circumstance of *Quomodo*, how Christ is present in the Sacrament.'

As for that which was said in the beginning of this Charge, "That Rome is a true Church:" I ever did, and ever must grant it, that such it is, *veritate entis*, in the truth of its entity and being. For as I have said against Fisher, *ens et verum*, being and true are convertible one with another. And every thing that hath a being, is truly that being which it is in truth of substance. But a right or an orthodox church I never said it was, either in doctrine or manners. As a thief is a true man in verity of his essence, that is, he is a creature indued with reason: but it doth not therefore follow and that he is a true man, *veritate moris*, in his life and conversation. 'And this I answered first to the Lords, and after to Mr. Browne's summary Charge; who in his last Reply said two things: First, That when I said Rome was a True Church, I spake it generally, without this distinction. But this is quite beyond the proof; for no witness says so. Besides, it is manifest by distinction of fundamentals from other doctrines, acknowledged by both the witnesses, that I did not speak it absolutely, but plain enough to any ordinary understanding. Secondly, which I was very sorry to hear from so grave a man, he added, That there was no truth of a church, but in the verity of doctrine and manners; and that in *veritate entis*, a company of Turks were a true church. Now God be merciful to us, whither are we posting? It is known that the Greek word *ἐκκλησία*, which signifies Church, signifies also in heathen authors any kind of Company or Congregation of men, Turks if you will. But in ecclesiastical writers, and

among all Christians, the word Church is used only (and *Sanctus* too) for a company of men which profess the faith of Christ, and are baptized into his name. And will any man say that a company of Turks are such a church in *veritate entis*, in the verity of this being, as all the world knows Papists are? Or if he will not speak *de ente tali*, but change the *suppositum*, he may say what he please. But I was very much troubled to hear this, and from him. I had almost forgot that Mr. Nicolas here pressed the authority of the Homilies upon me again; where it is said, "That the bishop of Rome and their adherents are not the true Church." But the answer is easy: for I say as the Homily doth, and as it means too in that place; namely, that the Church of Rome is not the True; that is, not the Catholic Church, nor the head thereof. But there is a great deal of difference between the Church and a Church: the one is the general, the other a particular. The Church it cannot be: A Church it is; and a true one too, in the sense before specified. Upon occasion of this, Mr. Nicolas's mouth was open again, and said, That at the beginning I reckoned up some that I had converted; but if this were my opinion, and that if this might stand for good, I might convert the Devil and all. My ears had been so beaten with his language, that I was patient, and left him to insult. And to help on this business, while he was in these loud expressions, the earl of Pembroke came to Mr. Burton to the bar, and in my hearing desired him to repeat the testimony he had given; which Mr. Burton did, and his lordship seemed to be much pleased with it. Not long before, when the news was come hot to the house that York was taken, when I came at five in the afternoon to make my Answer, I was no sooner come to the bar, but the same lord came and sat just before me, and there with much joy told Mr. Lieutenant the news. I presume he did it in favour to me, because he thought it would put me in very good heart, being then instantly to begin to make my Answer. God forgive this lord! for I have deserved in my time far better of him, if he understood himself, or any man else.

V. The next Charge was out of Dr. Pocklington's *Altare Christianum*, p. 49, 50. where he speaks (they say, for I now have not his book) of a happiness that the bishops of England can derive their succession from St. Peter; which, in great scorn, Mr. Nicolas called the Archbishop's Pedigree. First, If there be any Crime in this, Dr. Pocklington is to answer it, not I. Secondly, he may scorn what he will; but wise men know it is a great honour to the church of England, and a great stopple in the mouths of the Romanists, that her bishops can derive their calling successively from St. Peter; especially considering how much they stand upon personal succession. Thirdly, Dr. Pocklington in this says no more for me and the bishops, than St. Augustin urged for himself

and his brethren against the Donatists in the same words, save that St. Augustin begins at St. Peter, and descends to his own time; and the Doctor begins at his own time, and ascends to St. Peter. But it seems, an upstart clergy, without a calling, will serve Mr. Nicolas well enough."

VI. The sixth Charge was, that Books were written of purpose to maintain these opinions; and such men as writ them only preferred. He named Mr. Shelford, Mr. Butterfield, Dr. Consens, and Dr. Pocklington. This hath been clamoured upon already: If any have set out unworthy Books, they may be called to account for it; I hope I shall not answer for all the divines in the kingdom. They whom I preferred were worthy and able men, and it will not be in the power of Mr. White's centuries to blast a man of them among any that know them. For these that are named, Mr. Shelford I know not, Mr. Butterfield I saw punished in the High-Commission; neither of them preferred, that I know. The two last, by whomsoever they were preferred, deserved all the preferment they had, and more."

VII. The seventh Charge is out of my Diary at June 15, 1632, where 'tis said, "that I preferred Mr. Secretary Windebanks, my old friend." And here Mr. Nicolas laid all the correspondence open, which (he said) that gentleman had with the Pope's agents, with priests and Jesuits: and when he had made him this way as foul as he could, then I must be guilty of all, for preferring such a man to the king. This gentleman was indeed my ancient friend: In my many years acquaintance with him, I saw nothing in him but honesty and worth. If when he was preferred, he deceived my opinion, he is living to answer for himself. Many in all ages have been preferred to princes, which do not answer the hopes and desires of them that prefer them; and yet they not made answerable for them neither. But whether he did fail in any public trust, or no, I am not his judge. Yea, but some Letters were found from his son Thomas, what entertainment he had in foreign parts for his father's sake. But these letters were read to the lords, and there is not one word in them that relates to me: and 'tis both likely and fit the son of a Secretary of State should be worthily used in his travels. Yea, but his son Christopher was at Rome, and sent thither to insinuate himself with the Pope: So Andreas ab Habernfield writes in the papers which sir William Bisswell sent over to me. If he did send his son to that end, then I discovered his Plot; for I caused those papers to be examined by the king and the lords, as is before related. Besides, in my poor judgment, the Pope must be a very simple man ('it may be Mr. Nicolas

\* "Petro successit Linus, Lino Clemens, &c. et sic quoque ad Anastasium, qui nunc sedet. Et in hoc ordine successionis nullus Donatista Episcopus invenitur." S. Aug. Epist. 165.

'thinks him so, compared with himself'), that a youth of seventeen at the most, should insinuate himself to fish any thing out of him for his father's service. Lastly, he pressed, that my interest continued with Mr. Secretary in all these courses of his. 'Tis well known in court, the old interest did not continue between us: But for old friendship's sake I will not be drawn to say more. As for his releasing of any priests, he must give an account of that himself. But for myself, I was so careful in this particular, that I never put my hand, tho' public at Council-Table or Star-Chamber, to any release in all my time. I might be named, as present when such release was made, (which I could not avoid;) but act in any I did not. Nay, I was so careful, that I refused to set my hand to any licence to travel, lest, if any young man should be perverted abroad in his travels, any thing might be imputed to me. And this all the clerks of the council can witness. 'But I see no wariness, no care, can prevent the 'envy and the malice of the many and the 'mighty.'

VIII. The eighth Charge was my correspondence with Popish Priests. And for proof of this they produced divers witnesses.

1. The first Witness was one Wadsworth, one of the common messengers used to attach such persons. He says, that Snath, alias Fludd, brugged to him that he had acquaintance with me. Here's nothing but a bragging report of Smith; who, what he is, I know not. So here's no proof. He says, that 4*l.* was sent to himself, to free him out of prison; and that Davis told him it came from me. This is but a hearsay from Davis, as the former was from Smith. But say, my lords, if I did send him 4*l.* to free him out of prison, doth he not now very thankfully reward me for it? The truth is, my lords, I did send him 4*l.*: and the motive that made me send it, was because I heard he was a convert from Popery to be a Protestant, and that his imprisonment was as much for that as for any thing else. And this was attested to the lords by my servant Mr. Snath, who was one of them that moved me for him.

2. The second Witness was Francis Newton, another messenger. He says, that when he had taken Henry Mors, a priest, he should have been carried to a private committee; that he disliked it, and complained to Mr. Secretary Cook, who (he says) sent him to me; and that when he came to Lambeth, Mr. Dell told him I was in my garden with sir Toby Matthew. My servant Mr. Dell being appointed my solicitor, was now present in court, and denied all this. And well he might; for sir Toby was never in my garden with me in all his life. And if Mr. Dell told him that I would not meddle in the business (as he says he did), Mr. Dell must give the account for it, not I. Yet if there were a reference of this Mors to a private Committee, the hindering of that was more proper to Mr. Secretary than to me. Howsoever, here was no hurt done: For he

confesses that Mors was sent back to Newgate. And, if (as he farther says) he was discharged by Mr. Secretary Windebank, that is nothing to me. He says, he was informed by Stukely, that Smith, alias Fludd, was acquainted with me. But if he were but informed so himself, that's no proof to inform your lordships. He says, that Brown a priest was dismissed out of the high-commission. Thus it was: he was called in thither for very foul uncleanness. In process of this business, he there openly confessed himself a priest. Hereupon that court sent him to Newgate. 'What became of him 'after, I know not, save that I know he was 'strictly examined by Mr. Pym and others concerning me.' This Newton, upon what grudge I know not, calls me rogue, and all to naught in all companies; and with so much I acquainted the lords.

3. The third Witness was *Tho. Mayo*, a messenger also. He says, that sir Toby Matthew was accounted a priest when he was in parts beyond the seas; and that he saw him in a coach with me, and that he went over with me in my barge. First, I gave in two exceptions against this Witness: one, that he was a man of no conscience: for he had shifted his religion from Protestant to Papist, and back again, three or four times: Which was a thing known. The other was, that he kept a Brothel-House at this present, and that his fellow Wadsworth knew this, and called him pimping knave, saying he kept a brace of wenches at this time in his house. And these words he spake of him but the fifth of this present July, in the Bull tavern in the Palace-Yard. So I thought him no fit witness. But he was heard, for all this. 'And afterward Wadsworth meeting my servant Mr. Snath, he told him that he did say 'so to Mayo, and wondered how I should come 'to hear it.' Being admitted, and saying as he did, I told the lords that he began with a very bold oath, and like a shifter of his religion; For I had four servants there, three of which usually attended me when I went and returned from court, Mr. Dell, Mr. Snath, Mr. Goodwin, and Mr. Dobson, and they all attested the contrary; and I never went, but one of these, at least, was with me. Besides, he is single in this testimony. He says, that he saw sir Toby several times in my house. But he confesses withal, that he never saw him near me. For my own part, I cannot say that ever he was within my doors. But if he, or others of his quality, do come to pry out any thing in my house, how is it possible for me to hinder it? My porter could not see it written in their foreheads, who they were. He says, that one Price was often seen at my house. But he doth not say he was seen with me, or there with my knowledge. He says, that one Leander was reported to have been my chamber-fellow in Oxford. First, this is but a report, and so no evidence. Secondly, if he were my chamber-fellow in Oxford when we were boys together, I am sure he was then no priest; and he was but a boy when he left the College. He confesses that

I gave order to observe who and how many resorted to ambassadors houses, and Signior Con's, and says he thought I could prove it. But I believe he would never have confessed it, but that he knew I could prove it. And thereupon I shewed the lords many papers certifying me what numbers were found resorting to each place respectively; and Thomas Mayo's hand to many of those papers. He says, he took one Peter Willford, and brought him to me to Whitehall, while sir John Lambie was with me. But he confesses withal, that Willford then shewed Mr. Secretary Windebank's Warrant to discharge him: And then what could I do to him? Nay, I have some cause to think he would never have apprehended him, had he not known he had that Warrant. Lastly, he says, that once at the Star-chamber I told him he was too quick and nimble for me. And I hope it is no treason, if I did say so. Nor could I mean he was too quick in apprehending priests, for I found both him and his fellows, after Crose's death, slow enough at that: But if I said so, it was because I could not tell how to trust his sliſſing and his wiliness.

4. The fourth Witness was *Elizabeth Graye*, wife to another messenger. And this is a very fine Witness. For first, she says, her husband was committed by my means, and then with a breath she says, she doth not know by whom he was committed, but she thinks by secretary Windebank and me. But since she doth not know, but think only, I hope her thinking can be no evidence. She says, that she delivered me a Petition, and that I flung it away, saying, "I would not meddle with any priest-catching knave." The witness single, and I doubt deating, and the words far from treason.

5. The fifth Witness was *John Cooke*, a Messenger too, and one that for his misdemeanor had stood in the Pillory. This I urged against him, as unfit to witness against me: 'My Witness that saw him in the Pillory, was so threatened, that he sent me word he durst not come. I may not say from whom this threatening came.' But the thing was so true, that Cooke himself confessed it, but excused the cause; and his testimony received. He told how Fisher the Jesuit was taken by Graye; that when he was brought to the council-table, secretary Cook and I went to the king to know his pleasure about him; that we brought back word from his majesty to the lords, that he should be banished. All this while here is no hurt done. Then he says, that notwithstanding this order of his majesty, Graye and he met Fisher at liberty, by a Warrant from secretary Windebank: That hereupon Graye repaired to secretary Cook, and to me, and that Dell told him I would not meddle with it. My secretary must answer this, I remember it not. But if Mr. Dell received any such answer from me, that I would not meddle with it; there were two apparent reasons for it: One, that I would not meddle with it alone, his majesty's Order being to all the Lords; The other, that Fisher was the man

I had written against, and men would have been apt to say, that when I could not answer, I sought means to destroy. So I no way fit, alone at least, to meddle with him, of all men. He says, that Graye was committed to the Fleet for railing on me in my own house. Yet he confesses, that he was not committed by me. And I presume your lordships will think there was cause of his commitment, if he did rail upon me. And it is confessed by Mr. Prynn (though he had then received no answer from myself), That he said he saw now how the game went, and hoped ere long to see better days, &c. He says, That Smith, alias Fludd, desired sir Kenelm Digby, as he was going to Lambeth, to tell me that he could not dine with me that day, but desired his business might be remembered. No such man ever dined at my table, to my knowledge. And if any priest would say so to sir Kenelm, how could I possibly hinder it? And sir Kenelm, when this Cooke was examined, was a prisoner in Winchester-house; why was not he examined to sift out this truth, if truth be in it?

6. The sixth Witness was *John Thresher*, a messenger too: He says, that he took Mors and Goodwin, two priests; and that secretary Windebank took away his Warrant, and dismissed them, saying, he would speak with me about it: And that when he came to me, I was angry with him about the Warrant. Mr. Secretary Windebank will, I hope, be able to answer for his own actions. Why he dismissed the Priests, I know not; but he had great reason to take away his Warrant, and I had a greater reason to be angry with him for it. For no Warrant can issue from the High-Commission Court, but under three of their hands at least. Now Thresher having gotten my hand to the Warrant, never goes for more hands, but proceeds in his office, upon this unwarrantable Warrant. Had not I reason to be offended at this? He says, that at the same time I said that Graye was an ill-tongued fellow, and that if he kept him company, I should not regard him. I had good cause to say this and more, considering how Graye had used me: And I believe no Archbishop would have borne his words. Lastly, he says, That by a Warrant from me he arrested sir Toby Mathew, and that the earl of Strafford stayed him from going to prison, saying, he should answer it before the Lords. Here by the Witness himself it appears that I did my duty. And sir Toby did appear before the lords, as was assumed [assured] he should. In the mean time, I was complained of to the Queen: And a great lady, who perhaps made the complaint, stood by, and made herself merry to hear me chid. The Queen was pleased to send to the Lords, and sir Toby was released. Where my fault was in all this, I do not yet see.

7. The last of these famous Witnesses was *Goldsmith*; who says nothing, but that one day before the High-Commission Court began, I fore-warned the Messengers of that court of

Graye, in regard he was openly spoke against at the Council-Table. Which, all things considered, I had great reason to do. He says likewise, that then Graye's wife tendered me a Petition, which I rejected, saying, "I would meddle with no priest-catching knaves." I think his carriage deserved no better of me, than to reject his Petition: but as for the words, I cannot own them: let the Goldsmith look to it that he have not forged them. [Frigide dictum. W. S. A. C.] And I would very willingly know, whether when the Apostle required, that "an accusation should not be received against an Elder, but under two or three Witnesses." (1 Tim. v. 19.) he had any meaning they should be such as these?

IX. The ninth Charge was about the ordering of Popish Books that were seized, and the disposing of them. The sole Witness here is John Egerton: He says, These Books were delivered to Mr. Mattershead, register to the High-Commission. And I say so too; it was the constant course of the High-Commission to send them thither, and have them kept in that office, till there was a sufficient number of them, and then to burn them. Yea, but he adds, That Mattershead told him they were re-delivered to the owners. This is but a report, and Mattershead is dead, who should make it good. And though this be but a single Witness, and of a dead man's report; yet Mr. Browne thought fit to sum it up with the rest. But surely if any Books were re-delivered to the owners, it was so ordered by the High-Commission, in regard the Books were not found dangerous: From me Mattershead had never any such command. Lastly, he says, He met sir Toby Matthew twice at Lambeth. But he confesses he never saw him with me; and then me it cannot concern.

X. The tenth Charge was concerning the Priests in Newgate; the Witnesses are Mr. Deuel, and Francis Newton. They both agree, and they say, That the Priests there had the best chambers, and liberty to go abroad without keepers. I hope these men do not mean to make the Archbishop of Canterbury Keeper of Newgate. If any man gave them this liberty, he is to be blamed for it, not I, who never knew it till now. Nor do either of these Witnesses say, that they called on me for remedy, or ever did so much as acquaint me with it. And they say this was 12 years since: and I had been Archbishop but seven years when I was committed.

XI. The eleventh Charge was about Words in my Epistle Dedicatory before my Book against Mr. Fisher. The words these: "For, to my remembrance, I have not given him, or his, so much as coarse language." So the Charge is, because I have not given ill words. And here Mr. Nicolas fell foul upon me again for taking such care, that the Whore of Babylon may have nothing but good words, &c. But first, my lords, I have always thought, and do still, that ill language is no proof against an

adversary: All the good it can do, is, it may bring scorn upon the author, and work hardness of heart in the adversary, whom he doth or should labour to convert. And this I learned of two eminent fathers in the church, Gregory Nazianzen\*, and St. Augustine.† The first would not use it, no not against the Arians, who, as he saith, made open war against the Deity of Christ. Nor would the other against the same adversaries. The one accounts it ignorance, though a fashion taken up by many; and the other loss of time. And here I desired the Lords, that I might read what immediately followed this passage, which was granted: And there, as their Lordships did, so may the reader see, if he please, that though my words were not uncivil, yet in that matter I favoured neither him nor his. And to avoid tediousness, thither I refer the reader, with this, that sometimes men apt enough to accuse me, can plead for this moderation in their own cases, and tell each other that "Christ will not own bitterness in maintaining any way, though consonant to his word." And another "finds just fault both with Papist and Martin Mar-Prelate, for this reproachful language||." And yet it must be a crime in me not to use it.

XII. The last Charge was the commitment of one Ann Hussey to the Sheriff of London. The business was this: She sent one Philip Bambridge to tell me of I know not what Plot against the king (nor I think she neither). Bambridge came to Whitehall toward the evening, and could make nothing of this dangerous Plot. Yet because it pretended so high, I sent him presently to Mr. Secretary Windebank; I being the next morning to go out of town. The business was called to the Council-Table. When I came back, I was present there. Bambridge produced Ann Hussey, but she could make nothing appear. She says, I thought she was out of her wits. Not so, my lords; but I did not think she was well in them; nor do I yet. And whereas she complains of her imprisonment, it was her own desire she might be committed to the Sheriff; and Mr. Hearn, my counsel here present, was assigned by the lords to take her Examination. Therefore if any particular in this charge stick with your Lordships, I humbly desire Mr. Hearn may supply my want of memory. But it passed over, as well it might. Here this day ended, and I was ordered to attend again July 29.

*The Twentieth, and the last Day of my Hearing.*

Monday, July 29, 1644. This day I appeared again, and they proceeded upon the

\* "Non imperitè docemus, nec adversarios contumelias incessimus, ut plerique faciunt, &c." Greg. Naz. Orat. 32.

† "Atsineamus nos à conviciis, ne tempe inaniter impendamus, &c." Aug. Epist. 177.

‡ In the Antiquaries to Mr. Prynn, p. 12.

|| Sid. Simpson's Anatomist, p. 2, and 6.

Fourteenth Original Article, which follows in these words:

XIV. "That to preserve himself from being questioned for these, and other his traitorous courses, he hath laboured to subvert the Rights of Parliaments, and the ancient course of Parliamentary Proceedings, and by false and malicious slanders to incense his majesty against Parliaments. By which words, counsels and actions, he hath traitorously, and contrary to his allegiance, laboured to alienate the hearts of the king's liege people from his majesty, to set a division between them, and to ruin and destroy his majesty's kingdoms. For which they do impeach him of High-Treason against our sovereign lord the king, his crown and dignity."

I. The first Charge of this day was prefaced with a Note out of my Diary at May 8, 1626. "That the duke of Buckingham was that day impeached to the lords by the house of commons." And at May 25, "The difference arising in the house of peers about the earl of Arundel's commitment to the Tower without a cause declared." No use made of these, but that I, then bishop of St. David's, took notice of these things. Then the Charge followed; and the first of it was, that I then being of the Lords House, and so to be one of the Duke's Judges, made a speech for him, and corrected his speech in some particulars; and of a Judge made myself an Advocate. Which Mr. Nicolas said was a great offence. I saw not these Papers, and therefore can say nothing, what is, or is not under my hand. But to the thing itself I say first, That if in that speech any particular fault had been found impeaching any Right or Power of Parliament, that I must have answered; but none is charged, but only the bare making of one speech, and the mending of another. And this is a very poor argument of any enmity against Parliaments. Secondly, seeing no fault is charged upon me in particular, it was but the office of a poor friend to a great one, to whom being so much bound as I was I could not refuse so much service, being intreated to it. And, thirdly, I do humbly conceive, that so long as there was nothing done against law, any friend may privately assist another in his difficulties. And I am persuaded, many friends in either house do what they justly may, when such sad occasions happen. And this Answer I gave to Mr. Browne, when he summed up my Charge in the House of Commons.

But Mr. Browne did not begin with this, but with another, here omitted by Mr. Nicolas; though he had pressed it before in the fifteenth day of my Hearing. Dr. Potter writ unto me for my advice in some passages of a Book writ by him (as I remember, against a Book intitled, *Charity Mistaken*): I did not think it fit to amend any thing with my own pen, but put some few things back to his second thoughts, of which this was one; that if he express himself so, he will give as much

power to the Parliament in matters of doctrine, as to the Church. This Mr. Browne said, took away all authority from Parliaments, in that kind. But, under favour, this takes away not all, nor any that is due unto them. Not all, for my words are about "giving so much power." Now he that would not have so much given to the one, as the other, doth not take away all from either: not any that is due to them; for my words not meddling simply with Parliamentary Power, as appears by the comparative words "so much," my intention must needs be to have Dr. Potter so to consider of his words, as that, that which is proper to the Church, might not be ascribed to parliaments. And this I conceive is plain in the very letter of the law. The words of the Statute, 1 Eliz. c. 1, are, "Or such as shall hereafter be ordered, judged, or determined to be Heresy, by the High Court of Parliament in this realm, with the assent of the Clergy in their Convocation." Where it is manifest, that the judging and determining part, for the truth or falshood of the doctrine, is in the Church. For "the assent of the Church" or clergy cannot be given, but in Convocation, and so the law requires it. Now, "assent in convocation" cannot be given, but there must precede a debate, a judging, a voting, and a determining. Therefore the "determining power" for the truth or falshood of the doctrine, heresy or no heresy, is in the Church: but "the judging and determining power," for binding to obedience, and for punishing, is in the Parliament, with this Assent of the Clergy. Therefore I humbly conceive the Parliament cannot by law, that is, till this law be first altered, determine the truth of doctrine without this assent of the Church in Convocation; and that such a Synod and Convocation, as is chosen and assembled as the laws and customs of this realm require.

To this Mr. Browne, in his Reply upon me in the House of Commons, said two things: the one, that this branch of the statute of 1 Eliz. was for Heresy only, and the adjudging of that; but meddles not with the Parliament's power in other matters of Religion. If it be for Heresy only, that the Church alone shall not so determine Heresy, as to bring those grievous punishments which the law lays upon it, upon the neck of any subject, without determination in Parliament; then is the Church in Convocation left free also in other matters of Religion, according to the first clause in Magna Charta, which establishes the Church in all her rights. And her main and constant right when that Charter was made and confirmed, "was power of determining in matters of doctrine and discipline of the Church." And this right of the Clergy is not bounded or limited by any law, but this clause of 1 Eliz. that ever I heard of.

The other was, That if this were so, that the Parliament might not meddle with Religion, but with the assent of the Clergy in

‘Convocation, we should have had no Reformation: for the Bi-hops and the Clergy dissented. First, it is not, as I conceive, to be denied, that the King and his High Court of Parliament may make any law what they please, and by their absolute power may change Religion, Christianity into Turcism, if they please, which God forbid: and the subjects, whose consciences cannot obey, must fly, or endure the penalty of the law. But both King and Parliament are *sub gravo i regno*, and must answer to God for all such abuse of power. But beside this absolute, there is a limited power; limited, I say, by natural justice and equity, by which no man, no court, can do more, than what he can by right: and according to this power, the Church’s interest must be considered, and that indifferently, as well as the Parliament’s. To apply this to the particular of the Reformation: The Parliament, in the beginning of queen Elizabeth, would not endure Popish Superstition, and by absolute power abolished it,\* without any assent of the Clergy in Convocation. And then in her first year, A. D. 1559, she had a Visitation, and set out her Injunctions, to direct and order such of the Clergy as could conform their judgments to the Reformation.

‘But then so soon as the Clergy was settled, and that a form of doctrine was to be agreed upon, to shew the difference from the Roman superstition, a Synod was called: and in the year 1562, the Articles of Religion were agreed upon, and they were determined and confirmed by Parliament, with the assent of the Clergy in Convocation, and that by a just and orderly power. Nor is the absolute power of king and parliament any way unjust in itself, but may many ways be made such, by misinformation, or otherwise. And this gives the king and the parliament their full power, and yet preserves this Church in her just right: just, and acknowledged by some that loved her not over-well. For the lord Brooke tells us, [Discourse, § 1, c. 9, p. 51], “That what a Church will take for true doctrine, lies only in Church.” Nay, the very Heathen saw clearly the justice of this; for M. Lucullus was able to say in Tully, “That the priests were judges of religion, and the senate of law.” [Cic. l. 4, Epist. ad Att. Ep. 2.]

II. The second Proof is, That I made two Speeches for the king, to be spoken or sent to the Parliament that then was; and that they had some sour and ill passages in them. ‘These Speeches were read to the Lords; and had I now the Copies, I would insert them here, and make the world judge of them.’ First, I might shuffle here, and deny the making of them: for no Proof is offered, but that they are in my hand, and that is no necessary Proof; for I had then many Papers by me written in

my own hand, which were not my making, though I transcribed them, as not thinking it fit to trust them in other hands.\* But, secondly, I did make them, and I followed the Instructions which were given me, as close as I could, to the very phrases; and being commanded to the service, I hope it shall not now be made my crime that I was trusted by my sovereign. Thirdly, As I did never endeavour to embitter the king this way; so the smart passages which Mr. Nicolas says are there, I hope will not be thought such, when it is considered whose mouth was to utter them, and upon what occasion: yet if such they shall be thought, I am heartily sorry for them, and humbly desire they may be passed by. However, they can make no proof that I am an enemy to Parliaments. ‘And this Answer I gave Mr. Browne in the House of Commons, ‘for he there omitted it not.’

III. The third Proof that I am an enemy to Parliaments, is the testimony of one Mr. Bland: a forward witness, he hath been against me in other particulars. Here he says, That sir Sackvil Crowe shewed him a Paper, in which were 15 or 16 passages concerning Parliaments, with some sour aspersions to boot; and that this paper was subscribed W. Laud. First, my Lords, this man is but a single Witness. Secondly, He says, he had this Paper from sir Sackvil Crowe, and he is now in Turkey, and cannot be produced, that the truth may be known. Thirdly, As I never gave sir Sackvil any such Paper, so had he come by any such, it is more than probable somebody else might have seen it beside Mr. Bland, to make a second Witness. Fourthly, This is a very bold oath; for he swears, the Paper was subscribed with my own hand, W. Laud: Whereas I being then bishop of St. David’s, never writ my name to any thing other than Guil. Meneven. Let him bethink himself of this oath, *ne quid gravius dicam*. Besides, it may be considered too, that this, with some particulars mentioned by Mr. Bland, was charged in the first Additional Article, and now brought in upon the fourteenth Original; partly to confound me, that I might not see how, or against what to defend myself; and partly to make me secure, because they had quite passed over the first Additional: but especially, because they had therein charged me, that these Propositions of mine had caused that Parliament to be dissolved; and yet in the same Article, and within three lines, it is said expressly, That my Propositions were delivered to my lord duke of Buckingham after that Parliament was dissolved. ‘So this Article hangs as well together as Mr. Bland’s testimony concerning it. Mr. Browne pressed this also hard against me; but I answered according to the sum of ‘that which is above written.’ And as for the particular said to be in that Paper, were it

\* By the advice of her Honourable Council. Prefat. to the Injunctions.

\* See the Diary at March 26, 29. May 11, A. D. 1626. II. W.

mine, as it is not, or were the words thought treasonable; as well they cannot be, yet the statute of queen Mary makes it, that no words, nor writings, nor cypherings, nor deeds, shall be Treason, but only such as are within the statute of 25 Edw. 3, and no other. And this statute I then read to the Lords, though I conceive there was no need of it.

IV. The fourth Proof was out of my Diary, at June 15, 1626. The words these: "Post multas agitationes privata malitia in Ducem Buckinghamiæ superavit et suffocavit omnia publica negotia; nihil actum est, sed parlamentum solum." And this was applied first by Mr. Nicolas, and after by Mr. Browne, as if I had charged this private malice upon the Parliament. But this is utterly mistaken: for I spake not this of the Parliament, but of some few particular men, some of the house, 'Men well enough known to the world;' and more, not of the house, but sticklers at large, who went between, and did very ill offices, and so wronged both the King and the Parliament: which is no new thing in England. That my words there cannot be meant of the Parliament, is two ways apparent. First, in that I say, *privata malitia*, private malice did it; but name not the Parliament, nor charge any thing upon it. Secondly, Because had I spoken this of the Parliament, it could not have been called *private*, but *public* malice; nothing being more public in this kingdom, than what is done in and by the Parliament.

V. The fifth Proof was, that a Proclamation for calling in of the Remonstrances, was found in my Study: And Mr. Nicolas said, they conceived I had a hand in it: It was as lawful for me to have and keep this Proclamation, as for any other subject. And their conceit that I had a hand in it, is no Proof. Mr. Nicolas says, that my preferments followed very quick upon this; and infers, that I was preferred for my ill services in this kind. But all the Proof that he brings for this his uncharitable inference, is the comparing of the times; and I shall be content to be tried by that. For by his own acknowledgment this Proclamation came out June 16, 1622, I being then bishop of St. David's: and he confesses I was not made bishop of Bath and Wells till June 20, 1626, full four years after; nor a privy-counsellor till April 29, 1627, which was five years after. Whereas rewards for such services are found to come much quicker. 'And Mr. Browne, when he made his summary Charge, slighted this, and passed it over.

VI. The sixth Proof of my Enmity to Parliaments, was a Paper of Reasons, Mr. Nicolas said, against Parliaments. But, First, when this Paper was shewed and read to the lords, it was found otherwise, and was but a Paper of Hopes and Fears, which were conceived of a Parliament: Not Reasons against them. Secondly, these Fears and Hopes were not of a Parliament then in being, but of one in deliberation, whether it should be or not at

that time; which all men know is often disputed, and without offence. And any considering man may privately do it, for his own use and trial of his judgment. Thirdly, in this deliberation, I was not the author of these Fears and Hopes, but an Amanuensis to higher powers, in regard their hands were slower; though commanded also to set down my own opinion, which I did. Fourthly, I was then either a counsellor, or a sworn servant to the king, and required, upon my oath, to deliver truly both my Fears and my Hopes; and I durst not perjure myself: and I hope the keeping of my oath, and doing my duty in that kind, shall not now prejudice my life. Fifthly, these Fears and Hopes, whatever they contain, did relate to the being or not being of that one Parliament only, as appears in the very Paper itself; and the Hopes prevailed, and that Parliament sat. 'And this Answer I gave to Mr. Browne, 'who made all the use of this Paper, that could be, against me.'

Here Mr. Nicolas brings in Mr. *Blund* again, who says, that the four last heads in this Paper, were in that Paper also which was shewed him. This single Witness hath an excellent memory, that can remember four heads of a Paper punctually sixteen years ago. I asked why he did not complain of me then, when his memory was fresher, and his witness sir Sackvil Crowe nearer. 'Twas replied, "He durst not for my greatness." Why, but he knows well enough, that Parliaments, when they have a just cause of proceeding, do neither fear nor spare any man's greatness. And is it probable, that they which spared not the Duke of Buckingham's greatness, would have feared mine, being then a poor bishop of Bath and Wells? And a Parliament was held again in the very next year, 1627, so that he wanted not opportunity to complain. Nor can I believe any opinion of my supposed greatness stopped him: Let him look into himself.

Then Mr. Nicolas told the lords with great vehemency what venom there was in this Paper, which, he said, was in every particular. A right spider I see now he is, venom out of any thing.

[Here is a void space left, I suppose, with design to have the Paper (here mentioned) to be inserted: which was not done.]

VII. The seventh Proof out of my Diary at March 1628, where the words are "That the Parliament which was dissolved March 10, 1628, sought my ruin." 'This had been a better argument to prove Parliaments an enemy to me, than me to them.' But nothing can be meant by this, but that my ruin was sought in that Parliament by some particular men whose edge was too keen against me. And this appears in my Diary at June 14, preceding; at which time I was put into a Remonstrance, which, had I been found any way guilty, must needs have ruined me. But by God's blessing, the very same day I did clearly acquit myself in open Parliament, of all the

aspersions cast upon me about Dr. Manwaring's Sermons. 'This particular Mr. Browne charged upon me, and I answered as before: 'But Mr. Nicolas did not touch upon it this day.'

VIII. The eighth Proof that I was an Enemy to Parliaments, was taken from some marginal notes, which I had made upon a printed speech of sir Benjamin Rudyard, which he spake in the Parliament held anno 1627. Mr. Nicolas named four; but Mr. Browne, in summing up my Charge, insisted only upon two. The word "reducing;" and the "aim of gaining from the king." Sir Benjamin Rudyard is my old acquaintance, and a very worthy member of that house, both now and then. But be a man never so worthy, may he not use some phrase amiss? Or if he do, may not I or another observe, yea, check at it, but by-and-by I must be an Enemy to Parliaments? Is there any argument in this? I said a gentleman in the House of Commons used an ill phrase in a speech of his in that house, therefore I am an Enemy to the Parliament in which he spake it? Say I am mistaken, and not lie, and that the phrase is without exception; yet this is but my error in judgment, no proof of enmity, either to the Parliament, or him that spake it. That which I said was this: First, "that the word *reducing*, as there placed, was a hard phrase." Let any man view that speech considerably, and tell me whether it be not so. Secondly, "that I dislike the word *gaining* being between the king and his people in Parliament." For (as I humbly conceive) there will always be work enough for both to join for the public good; and well it can never be, if they which should so join, do labour only to gain one from another. For if the king shall labour to *gain* upon the liberty or property of the subject, or the subjects in Parliament labour to *gain* from the just power and prerogative of the king; can any prudent man think the public can thrive therewith? Yea, but they say, that my marginal note upon this phrase was, that this *gaining* was the aim of the Lower House. If my note be so, yet that cannot be otherwise understood, than that according to this expression, this must be their aim. 'And the reason why I found fault with this phrase was, because I saw this must follow out of it. So, under favour, I was not so bold with this gentleman, as he was with the house in using this speech.'

IX. The next Proof was, That I found fault with eight Bills that were then in the house. This is a very poor proof of my Enmity to Parliaments, that I disliked some Bills proposed in them; though there be no proof of this urged at all, save only that I writ the time, May 27, 1628, upon the Paper where the Bills were mentioned. And I hope, to mention the time when any Bills were proposed, is not to dislike the Bills. But say I did dislike them, what then? Is it lawful for any Member of the House (and

such was I then) to take exceptions which he thinks are just, against any Bill before it pass. And shall not that which is lawful for any man to do, be lawful for me? Beside, almost all Bills are put in by private persons: The House is not interested in them, till they are passed and voted by them: So that till then any man may spend his judgment upon the Bill, without any wrong at all to the Parliament. 'Mr. Browne saw this well enough, and therefore vouchsafed not so much as to name it.'

X. The tenth Proof was, That I made an Answer to the Remonstrance set out by Parliament, anno 1628. This was pressed before, and here it is laid hold of on all hands, to make as full a cry as it can against me. 'Mr. Nicolas presses it here aloud, as he doth all things, and Mr. Browne lays it close in summing up the Charge.' My Answer the same to both. 1. They charge me, That I made that Answer to the Remonstrance which came forth anno 1628. I did this by the king's command, and upon such instructions as were given me. And as I obeyed the command, so did I closely pursue my instructions: and I durst do no other; for I was then upon my oath as a sworn counsellor, and so employed in that service. And I hope no man will conceive, that I would, without such a command, have undertaken such a kind of service. 2. Yea, but they say, It doth not appear that I had any such command. Yes, that appears as plainly as that I made it. For they bring no proof that I made it, but because the Indorsement upon that Paper is in my hand, and calls it my Answer: and the same Indorsement says, I made it by his majesty's command. So either the Indorsement is no sufficient proof for the one, or if it be, it is sufficient for both; and must needs witness the one for me with the same strength that it doth the other against me. For a kind of confession that Indorsement is, and must therefore not be broken, but be taken with all its qualities. 3. Thirdly, They say there are some sour and bitter passages in the Answer. It is more than I perceived, if it be so. Nor was any sourness intended. And I hope no such passages found in it, the person considered in whose name the Answer was made. The expressions indeed might have been too big for a subject's mouth. 4. Fourthly, They say I was displeased that this Answer was not printed; but all the Proof for it is, that it is written upon the Paper, that there was an intention to print it, but that I know not what hindered it. 'But this argument can never conclude: John a Nokes knows not who hindered the printing of a Jewish catechism in England, therefore he was displeased the catechism was not printed. But I see every foot can help to trample him that is down.' Yea, but they instanced in three particulars, which they charged severally upon me. The first particular was, That by this Remonstrance they sought to fill our people's hearts more than our ears. A second was, That they swelled to that bigness, till they broke themselves. But now

ther of these strike at any right or privilege of Parliaments; they only tax some abuses, which were conceived to be in the miscarriage of that one Parliament. And both these particulars were in my instructions. And though I have ever honoured Parliaments, and ever shall, yet I cannot think them infallible. General councils have greater promises than they, yet they may err. 'And when a Parliament, by what ill accident never, comes to err, may not their king tell them of it? or must every passage in his Answer be sour, that pleases not?' And for that Remonstrance, whither it tended, let the world judge; the office is too dangerous for me. The third particular was, the excusing of Ireland, and the growth of Popery there, of which that Remonstrance, A. D. 1628, complained. This was in the instructions too. And I had reason to think, the king and his council understood the state of Ireland, for religion and other affairs, as well as other men. And I was the more easily led into the belief, that religion was much at one state in Ireland in queen Elizabeth's and king James's time, and now; because ever since I understood any thing of those Irish affairs, I still heard the same complaints that were now made. For in all these times they had their Romish Hierarchy; submitted to their Government; paid them Tythes; came not to the Protestant Churches; and rebelled under Tyrone, under pretence of Religion. And I do not conceive they have gone beyond this now. 'If they have, let them answer it who have occasioned it.' But to prove this great new Growth of Popery there, they produced first a Proclamation from the state in Ireland, dated April 1, 1629. Then a Letter of the bishop of Kilmore's to myself, dated April 1, 1630. Thirdly, a Complaint made to the state there, A. D. 1633, of this Growth, so that I could not but know it. Most true; when these informations came, I could not but know it: But look upon their date, and you shall find that all of them came after this Answer was made to the Remonstrance, and therefore could not possibly be foreseen by me, without the gift of prophecy. Then they produced a Letter of the earl of Strafford's in which he communicated to me, March 1633, That to mould the Lower House there, and to rule them the better, he had got them to be chosen of an equal number of Protestants and Papists. 'And here Mr. Maynard, who pressed this point of religion hard upon me, began to fall foul upon this policy of the earl of Strafford; and himself yet brake off with this, "But he is gone." Then he fell upon me as a man likely to approve those ways, because he desired the Letter might be communicated to me. This Letter was not written to me, as appears by the Charge itself: For if it had, no man else needed to communicate it to me. And I would fain know, how I could help any of this? If that lord would write any thing to me himself, or communicate any thing to another that should acquaint me with it, was it in my power to hinder either

of these? And there were other passages in this Letter, for which, I conceive, his Lordship desired the communication of that Letter to me, much more than the particular urged, which could no way relate unto me. 'And Mr. Browne in his sum said very little, if any thing, to this business of Ireland.'

XI. After this Mr. Nicolas, who would have nothing forgot that might help to multiply clamour against me, fell upon five particulars, which he did but name, and left the Lords to their Notes. Four of these five were handled before. As first, the words, "if the parliament prove peevish." Secondly, "that the king might use his own power." Thirdly, the violation of the Petition of Right. Fourthly, the Canons. Fifthly, that I set Spies about the Election of Parliament-Men in Gloucestershire: and for this last, they produced a Letter of one Allibon to Dr. Heylin. To the four first, I referred the Lords to their Notes of my Answers, as they did. To this last, that Mr. Allibon is a mere stranger to me, I know not the man. And it is not likely I should employ a stranger in such a business. The Letter was sent to Dr. Heylin, and if there were any discovery in it of jugglings there in those Elections (as too often there are), and if Dr. Heylin sent me those letters, as desirous I should see what practices are abroad, what fault is there in him or me for this?

XII. Then Mr. Nicolas would not omit that which he thought might disgrace and discontent me, though it could no way be drawn to be any accusation: it was out of my Diary, at Oct. 27, 1640, this Parliament being then ready to begin. The passage there is, "That going into my upper Study, to send away some Manuscripts to Oxford, I found my picture which hung there privately, fallen down upon the face, and lying on the floor; I am almost every day threatened with my ruin, God grant this be no omen of it!" The accident is true; and having so many libels causelessly thrown out against me, and hearing so many ways as I did, that my ruin was plotted, I had reason to apprehend it. But I apprehended it without passion, and with looking up to God, that it might not be ominous to me. 'What is this man angry at? Or why is this produced?'

XIII. But though I cannot tell why this was produced, yet the next was urged only to incense your lordships against me: It is in my Diary again, at Feb. 11, 1640, where Mr. Nicolas says confidently, I did abuse your lordships, and accuse you of injustice. My lords, what I said in my Diary, appears not; if it did appear whole and altogether, I doubt not but it alone would abundantly satisfy your lordships. But that passage is more than half burnt out (as is to be seen), whether of purpose by Mr. Prynne, or casually, I cannot tell: yet the passage is confidently made up, and read to your lordships, as if nothing were wanting. For the thing itself, the close of my words is

this: "So I see what justice I may expect, since here is a resolution taken, not only before my answer, but before my charge is brought up against me." Which words can traduce no man's justice: First, because they depend upon an *if*; if the Parliament-man there mentioned told me truth, that such a resolution was taken. And secondly, Because it can be no justice in any men, he the sentence never so moderate in itself, to take up a resolution what sentence shall pass, before Answer given, or Charge put: For else a man may be punished and, tried after, which is contrary to all rules of justice. [Aug. L. 13, de Trin. c. 13.] And therefore if such a resolution were taken (as I believe not), I might well say that which followed after.

XIV. Then was produced a Paper concerning the subsidies or aids which had been given in divers parliaments, in which it is said, at the beginning of it, "That Magna Charta had an obscure birth, and was fostered by an ill nurse." 'I believe that no man that knows Mr. Nicolas, thinks that he spake softly upon this.' No, he spake loud enough: What laws would I spare, that spake thus of Magna Charta? First, here is no proof offered that this Paper is my collection, but only that it is in my hand: By which argument, as is said before, I may be made the author of any thing; and so may any scholar, that is able and willing to inform himself. Secondly, The main draught of that Paper is not in my hand, though some notes upon it be. Thirdly, There are Littleton, and other lawyers, quoted in that Paper, authors which I never read. Nor is this now any disgrace to Magna Charta, that it had an obscure birth; For say the difficulties of the times brought it obscurely forth, that is no blemish to the credit and honour to which it hath for many ages attained. Not only their laws, but the greatest empires that have been in the world, some of them have had obscure beginnings: Witness the Roman Empire. Fourthly, What if our stories agree upon it, that it had an obscure birth, and a worse nurse? What if some law-books (which Mr. Nicolas never read), and those of good account, use almost the same words of Magna Charta, which are in that Paper? Shall the same words be history and law in them, and treason in me? And somewhat certainly there is in it, 'That Mr. Browne, when he gave his summary Charge against me, first to the lords, and after in the house of commons, quite omitted this particular. Sure I believe he found nothing was in the Paper but known truth, and so passed it over, else he would never have denied a vindication to Magna Charta.' [Here is a void space left in the margin, with design, I suppose, to insert therein some passages out of law-books concerning the obscure birth of Magna Charta; which space was not filled up. H. W.]

XV. After all this, Mr. Nicolas concludes with a Dream, which he says was mine. The Dream, he says, was, that I should come to

greater preferment in the church, and power in the state, than any man of my birth and calling had done before me, but that in the end I should be hanged. First, my lords, if I had had any such Dream, it is no proof of any thing against me. Dreams are not in the power of him that hath them, but in the unruliness of the fancy, which in broken sleep wanders which way it pleases, and shapes what it pleases; Numb. 11. But this Dream is brought in, as the fall of my picture was, to make me a scorn to your lordships and the people, and to try whether any thing will yet at last break my patience. This Dream is reported here according to Mr. Prynne's edition of my Diary, somewhat different from that which Mr. Prynne printed in a former book of his: But the beginning and the end agree. From Mr. Prynne, Culmer hath taken and printed it. And Mr. Prynne confessed before the lords, that one Mr. Badger, an attorney at law, a kinsman of mine, told it him. The truth, my lords, is this; This Badger married a near kinswoman of mine; he was a notorious separatist, and so nearer in affection to Mr. Prynne, than to me in alliance. This man came one day to me to Lambeth, and told me privately, which was more manners than usually the bold man had, that he heard I had such a Dream when I was young, in Oxford; I protested to him there was no such thing, and that some malicious fellow or other had set him on work to come and abuse me to my face. He seemed satisfied; But going to visit Mr. Prynne, then in the Tower, he told it him; and Mr. Prynne, without further proof, prints it in the next book he set out. When I saw it in print, and found that some in court took notice of it, I resolved to acquaint his majesty how I was used; and meeting with the earl of Pembroke, then lord chamberlain, and my great friend, as he pretended (the king being not then come forth of his chamber), I told his lordship how I was used; and when the king came forth, I told it him also. But the earl of Pembroke, then present in the house, and called up by them for a witness, forgetting the circumstances, but remembering the thing, took it upon his honour, that I said nothing of Mr. Prynne's printing it, but that I told him absolutely I had this Dream. Now, God forgive his lordship! I was much troubled in myself to hear him to take it upon his dishonour (for so it was), and yet unwilling, knowing his violence, to contest with him in that place, and in any condition; and observing what spleen he hath lately shewed against me, I stood a little still to gather up myself. When Mr. Nicolas, before I could make any reply, fell on with great earnestness, and told the lords, That the fore-part of my Dream was found true, to the great hurt of both church and state; and that he hoped they would now make good the latter, "That I might be hanged." To which I answered, That I had not forgotten our Saviour's prediction, St. John xvi. 33. "That in the world we should be sure to meet with affliction." Nor his prayer:

"Father, forgive these men, for they know not what they do;" St. Luke xxiii. 24. No; nor is that out of my memory which St. Paul speaks, 1 Cor. iv. 3, *de humano die*. But for the public, with this I shall conclude; "God of his infinite mercy bless the king and his people with love, and peace, and piety, and plenty, which is the worst I ever wished or endeavoured, whatsoever it shall please God shall become of me; to whose blessed will and pleasure, in all humility, I submit myself." And here ended this last day of my Trial. But before I went from the bar, I made three motions to the lords; The one, That I might have a day to make a Recapitulation of this long and various Charge, or of the chief heads of it, that it might appear in a body together. The other, That after this, my counsel might have a day to speak to all points of law incident to my cause. The third, That they would be pleased to remember, that I had pleaded the Act of Oblivion to the thirteenth Original Article. Mr. Nicolas said, they would acquaint their house with it. And the lords promised to take all into consideration. And so I was dismissed *sine die*.

"But here I may not go off from this Dream so, since Mr. Prynne hath printed it at the end of my Diary: where he shamelessly says, this Dream was attested from my own mouth at my Trial in the lords' house. For I have set down all that passed exactly. Nor did I then give any attestation to it; only before I could gather up myself to answer the earl of Pembroke in a fitting manner, and not to hurt myself, Mr. Nicolas fell upon me with that unchristian bitterness, as diverted me from the Earl, to answer him. But once for all, and to satisfy any man that desires it, that is all true which I have here set down concerning this Dream: and upon my christianity and hope of future salvation, I never had this Dream, nor any like it; nor did I ever tell it this lord, or any other, any other way than in relation to Budger and Prynne, as is before related. And sure if I had had such a Dream, I should not have had so little discretion as to tell it any man, least of all to pour it into that sieve, the earl of Pembroke. For that which follows, and wherein his charity and words are almost the same with those of Mr. Nicolas, I gave him the same answer, and, forgiving him all his most unchristian and insatiable malice against me, leave myself in the hands of God, not in his."

Aug. 23, 1644, I received an Order from the Lords, that if I had a mind to make a Recapitulation, as I had formerly desired, of my long and various Charge, I should provide myself for it against Monday next (this Order came upon Friday); and that I should give in my Answer the next morning what I meant to do. The next day, Aug. 24, in obedience to this Order, I gave in my Answer; which was humble thanks that I might have liberty to make it, referring the day to their honourable consideration, wish this, that Monday next was

a very short time for such a collection. Upon this Answer an Order was presently made, that I should provide to make my Recapitulation upon Monday, September 2. And about this time, the certain day I know not, it was resolved in the house of commons, that according to my plea I should enjoy the benefit of the Act of Oblivion, and not be put to answer the thirteenth Original Article, concerning the Scottish business. And truly, I bless God for it, I did not desire the benefit of that act for any sense of guiltiness which I had in myself; but in consideration of the times, and the malice of the now potent faction, which being implacable towards me, I could not think it wisdom to lay by any such power as might help to secure me. Yet in the former part of my history, when I had good reason to think I should not be called to answer such general Articles, I have set down my Answer to each of them, as much as generals can be answered. And thereby I hope my innocency will appear to this thirteenth Article also.

Then came Monday, September 2. And, according to the Order of the Lords, I made the Recapitulation of my whole Cause, in matters of greatest moment, in this form following: But so soon as I came to the bar, I saw every lord present with a new thin book in folio, in a blue coat. I heard that morning, that Mr. Prynne had printed my Diary, and published it to the world to disgrace me. Some Notes of his own are made upon it. The first and the last are two desperate untruths, besides some others. This was the Book then in the lords' hands; and I assure myself that time picked for it, that the sight of it might damp me, and disenable me to speak. I confess I was a little troubled at it. But after I had gathered up myself, and looked up to God, I went on to the business of the day, and thus I spake.

#### MY RECAPITULATION.

"My Lords, my Hearing began March 12, 1643-4, and continued to the end of July. In this time I was heard before your lordships, with much honour and patience, 20 days: and sent back without Hearing, by reason of your lordships greater employments, 12 days: The rest were taken up with providing the Charge against me.

"And now, my lords, being come near an end, I am by your grace and favour, and the leave of these gentlemen of the honourable House of Commons, to represent to your lordships and your memories, a brief sum of my Answers to this long and various Charge: in which I shall not only endeavour, but perform also all possible brevity. And as with much thankfulness I acknowledge myself bound to your lordships for your patience; so I cannot doubt but that I shall be as much obliged for your justice, in what I am innocent from crime: and for your clemency, in what the common frailty of mankind hath made me err. And I humbly desire your lordships to look upon the whole business

with honourable care of my calling, of my age, of my long imprisonment, of my sufferings in my estate, and of my patience in and through this whole affliction; the sequestration having been upon my estate above two years. In which, notwithstanding, I may not omit to give thanks for the relief which my Petition found, for my present necessities in this time of my Hearing, at your honourable hands.

1. First, then, I humbly desire your lordships to remember the generality, and, by occasion of that, the uncertainty of almost every Article charged upon me: which hath cast me into great straits all along in making my Defence.

2. Next, That your lordships will be pleased to consider what a short space, upon each day's Hearing, hath been allowed me to make my Answer to the many Charges in each several day laid against me: indeed, some days scarce time enough to peruse the Evidence, much less to make, and then to review and weigh my Answers: especially considering, to my greatest grief, that such a Charge should be brought up against me from so great and honourable a body as the Commons of England. In regard of which, and all other sad occasions, I did at first, and do still in all humility desire, that in all particulars concerning law, my counsel may be heard before your lordships proceed to sentence; and that a day may be assigned for my counsel accordingly.

3. Thirdly, I heartily pray also, that it may be taken into your honourable consideration, how I have all manner of ways been sifted to the very bran, for that, whatever it amounts to, which stands in charge against me.

(1.) The key and use of my study at Lambeth, Books and Papers taken from me.

(2.) A search upon me at the Tower, made by Mr. Prynne, and 21 bundles of Papers, prepared for my Defence, taken from me, and not three bundles restored to me again. This search made before any particular Articles were brought up against me. My very pockets searched; and my Diary, nay, my very Prayer Book taken from me, and after used against me: and that in some cases not to prove, but to make a Charge. Yet I am thus far glad, even for this sad accident: for by my Diary your lordships have seen the passages of my life; and by my Prayer Book the greatest secrets between God and my soul. So that you may be sure you have me at the very bottom. Yet, blessed be God, no disloyalty is found in the one; no popery in the other.

(3.) That all Books of Council-Table, Star-Chamber, High-Commission, Signet-Office, my own Registeries, and the Registeries of Oxford and Cambridge, have been most exquisitely searched for matter against me, and kept from me and my use, and so affording me no help towards my Defence.

(4.) I humbly desire your lordships to remember in the fourth place, that the things

wherein I took great pains, and all for the public good and honour of this kingdom and church, without any the least eye to my own particular, nay, with my own great and large expences, have been objected against me as crimes: as, namely, the Repair of St. Paul's, and the settling of the Statutes of the University of Oxford.

(1.) For St. Paul's: Not the Repair itself, they say (no, for very shame they dare not say that, though that be it which galls the faction); but the demolishing the houses which stood about it. Yea, but without taking down of these houses, it was not possible to come at the church to repair it; which is a known truth. And they were taken down by Commission under the broad-seal. And the tenants had valuable consideration for their several interests, according to the number of their years remaining, and according to the judgment of commissioners named for that purpose, and named by his majesty and the lords, not by me: nor did I ever so much as sit with them about this business. And if the Commission itself were any way illegal, as they urge it is, that must reflect upon them whose office was to draw and seal it; not on me, who understood not the legality or illegality of such commissions: nor did I desire that any one circumstance against law should be put into it; nor is any such thing so much as offered in proof against me. And because it was pressed, that these houses could not be pulled down but by order of parliament, and not by the king's commission alone; I did here first read in part, and afterwards, according to a salvo granted me, deliver into the court three records, two in Edward 1.'s time, and one in Edward 3.'s time, [1 Pars Pat. de an. 45 Ed. 3, m. 34], in which are these words: "Authentice nostra regali, prout opus fuerit, cessantibus quibuscumque appellationum et reclamatum diffugis, juris, scripti, aut patrie strepitu procedatis; nova edificia quæ, &c. amoveri, et divelli penitus faciatis, &c." And a little after, "Quousque per nos cum deliberatione et avisamento nostri consilii super hoc aliter fuerit ordinatum," &c. Here is no staying for a Parliament; here is no recompence given; here is barring of all appeal, nay, all remedy of law, though written. And all this by the king's own authority, with the advice of his council. And is a far more moderate way taken by me, yet under the same authority, and for the removal of far greater abuses, and for a more noble end, become Treason?

(2.) As for the Statutes of Oxford, the circumstances charged against me are many; and therefore I crave leave to refer myself to what I had already answered therein.

5. Fifthly, Many of the witnesses brought against me in this business are more than suspected sectaries and separatists from the Church; which by my place I was to punish, and that exasperated them against me, whereas by law, [Cod. l. 1, tit. 5, l. 12, and 21,

‘Confer. at Hampton Court, p. 26], no Schismatic ought to be received against his Bishop. And many of these are witnesses in their own causes, and pre-examined before they come in court; at which pre-examination I was not present, nor any for me, to cross-interrogate. Nay, many causes which took up divers days of Hearing in Star-Chamber, High-Commission, and at Council-Table, are now upon the sudden easily overthrown by the Depositions of the Parties themselves. And upon what law this is grounded, I humbly submit to your lordships. And such as these are the causes of Mr. Prynne, Mr. Burton, Mr. Wilson, alderman Chambers, Mr. Vassal, Mr. Waker, Mr. Huntly, Mr. Foxlye, and many other. Where I humbly represent also, how impossible it is for any man that sits as a judge to give an account of all the several motives which directed his conscience in so divers causes, and so many years past, as these have been, and where so many witnesses have been examined, as have been here produced against me: My Lords, above 150 witnesses, and some of them three, four, six times over; and Mr. Prynne I know not how often. Whereas as the civil law says expressly, That “the judges should moderate things so, that no man should be oppressed by the multitude of witnesses; which is a kind of proof too, that they which so do, distrust the truth and goodness of their cause.” Besides, my Lords, in all matters which came before me I have done nothing, to the uttermost of my understanding, but what might conduce to the peace and welfare of this kingdom, and the maintenance of the doctrine and discipline of this Church established by law; and under which God hath blessed this state with so great peace and plenty, as other neighbouring nations have looked upon with admiration. And what miseries the overthrow of it, which God in mercy forbid, may produce, he alone knows.

‘6. Sixthly, my Lords, there have been many and different Charges laid upon me about words. But many of them, if spoken, were only passionate and hasty; and such, upon what occasion soever drawn from me, and I have had all manner of provocations put upon me, may, among human errors, be pardoned unto me, if so it please your lordships. But for such as may seem to be of a higher nature, as those witnessed by sir Henry Vane the elder, I gave my answer again now fully to the Lords, but shall not need to repeat it here.

‘7. Seventhly, Then, my lords, for my actions: Not only my own, but other mens have been heavily charged against me in

\* “Judices moderentur, &c. ne effrenata potestate ad vexandos homines superflua multitudo testium protrahatur.” Dig. l. 22, tit. 5, l. 1, § 2. “Adde et hanc rationem, quod qui prædicta licentia abutuntur, veniunt in suspicionem, quod non satis confidunt veritati.” Gloss. Ibid.

‘many particulars, and that criminally, and I hope your lordships will think illegally: As secretary Windebank’s, bishop Mountague’s, my chaplains, Dr. Heylin’s, Dr. Cosen’s, Dr. Pocklington’s, Dr. Dove’s, Mr. Shelford’s, and divers others: And many of these Charges look back into many years past. Whereas the act made this present parliament takes no notice of, nor punishes any man for any thing done and past at the Council-Table, Star-Chamber, or High-Commission, much less doth it make any thing Treason. And out of this act I am no way excepted. Besides (as I have often pleaded), all acts done in the Star-Chamber, at Council-Table, High-Commission, or Convocation, are all joint acts of that body in and by which they were done; and cannot by any law be singly put upon me, it being a known rule of the law, “Refertur ad universos quod publice fit per majorem partem.” And Mr. Prynne himself can stand upon this rule against the Independents, and tell us, that the major voice or party ought to over-rule and bind the less; and he quotes scripture for it too. In which place, that which is done by the major part is ascribed to all; not laid upon any one, as here upon me. And in some of these courts, Star-Chamber especially, and Council-Table, I was accompanied with persons of great honour, knowledge, and experience, judges, and others; And it is to me strange, and will seem so to future ages, that one and the same act shall be Treason in me, and not the least crime, nay, nor misdemeanor in any other. And yet no proof hath been offered that I solicited any man to concur with me; and almost all the votes given preceded mine, so that mine could lead no man.

8. After this I answered to divers other particulars, as namely, to the Canons, both as they concerned aid to the king, and as they looked upon matters of the church and religion.

9. To the Charge about Prohibitions.

10. To the base Charge about Bribery. But pass them over here, as being answered before: Whither I may refer the reader now, though I could not the lords then.

‘11. My lords, after this came in the long and various Charge of my usurping Papal Power, and no less than a design to bring in all the Corruptions of Popery, to the utter overthrow of the Protestant Religion established in England. And this they went about to prove,

‘(1.) By my Windows in the Chapel: An argument as brittle as the glass in which the pictures are.

‘(2.) By Pictures in my Gallery; Which were there before the house was mine, and so proved to your lordships.

‘(3.) By Reverence done in my Chapel; As if it were not due to God, especially in his church; and done it was not to any other person or thing.

‘(4.) By Consecration of Churches; Which was long before Popery came into the world;

'as was also the care of safe laying up of all hallowed and sacred things. For which, I desire your lordships I may read a short passage out of sir Walter Raleigh's History; rather because written by a lay-man, and since the times of Reformation.'

But this Mr. Maynard excepted against, both as new matter, and because I had not the Book present, though the Paper thence transcribed was offered to be attested by oath to be a true Copy. But though I could not be suffered to read it then, yet here it follows: 'So sacred was the moveable Temple of God, and with such reverence guarded and transported, as 22,000 persons were dedicated to the service and attendance thereof, of which 8,580 had the peculiar charge, according to their several offices and functions, the particulars whereof are in the third and fourth of Numbers. The reverend care which Moses the prophet and chosen servant of God had in all that belonged even to the outward and least parts of the tabernacle, ark, and sanctuary, witnessed well the inward and most humble zeal borne toward God himself. The industry used in the framing thereof, and every and the least part thereof, the curious workmanship thereon bestowed, the exceeding charge and expence in the provisions, the dutiful observance in laying up and preserving the holy vessels, the solemn removing thereof, the vigilant attendance thereon, and the provident defence of the same, which all ages have in some degree imitated, is now so forgotten and cast away, in this superfine age, by those of the Family, by the Anabaptists, Brownists, and other sectaries, as all costs and care bestowed and had of the church, wherein God is to be served and worshipped, is accounted a kind of popery, and as proceeding from an idolatrous disposition. Inasmuch, as time would soon bring to pass (if it were not resisted) that God would be turned out of churches into barns, and from thence again into the fields and mountains, and under the hedges; and the office of the ministry (robbed of all dignity and respect) be as contemptible as those places; all order, discipline, and church-government, left to newness of opinion and men's fancies; Yea, and soon after as many kinds of religions would spring up, as there are parish-churches, &c.' Do ye not think somebody set Mr. Maynard on to prohibit the reading out of this passage, as foreseeing whither it tended? For I had read one third part of it, before I had the stop put unto me.

'(5.) But they went on with their proof, by my censuring of good men, that is, separatists and refractory persons.

'(6.) By my chaplains expunging some things out of books which made against the Papists. It may be, if my Chaplains, whom it concerns, had liberty to answer, they were such passages as could not be made good against the Papists: and then it is far better they should be out than in. For as

'St. Augustin\* observed in his, and we find it true in our time, "The inconvenience is great, which comes to the church and religion by bold affirmers." Nay, he is at a *satis dici non potest*, the mischief is so great as cannot be expressed.

'(7.) Then by altering some things in a Sermon of Dr. Sibthorp's. But my answer formerly given will shew I had cause.

'(8.) By my preferment of unworthy men. So unworthy, as that they would be famous both for life and learning, were they in any other Protestant Church in Christendom. And they are so popishly affected, as that having suffered much both in state and reputation (since this persecution of the Clergy began; for less it hath not been), no one of them is altered in judgment, or fallen into any liking with the Church of Rome.

'(9.) By the Overthrow of the Feoffment; But that was done by Judgment in the Exchequer, to which I referred myself. And if the Judgment there given be right, there is no fault in any man; If it were wrong, the fault was in the judges, not in me; I solicited none of them.

'(10.) By a passage in my Book, where I say, The religion of the Papists and ours is one; But that is expressed at large, only because both are Christianity; and no man, I hope, will deny that Papists are Christians. As for their notorious failings in Christianity, I have in the same Book said enough to them.

'(11.) By a testimony of Mr. Burton's and Mr. Lane's, that I should say, "we and the Church of Rome did not differ in fundamentals, but in circumstantials." [This I here followed at large; but, to avoid tedious repetition, refer my reader to the place where it is answered.]

'(12.) By my making the Dutch Churches to be of another religion. But this is mistaken, as my answer will shew the reader; and if they do not make themselves of another religion, I shall never endeavour to make them.

'(13.) By a pack of such witnesses, as were never produced against any man of my place and calling; Messengers and Pursuivants, and such as have shifted their Religion to and again; Pilory-Men and Bawds; and these the men that must prove my Correspondence with Priests.

'(14.) In the midst of these, upon occasion of the Ceremonies at the Coronation, it was pressed against me, "that I had altered the king's oath."

'(15.) And last of all, "that I had shewed myself an Enemy to Parliaments." [Upon both these I did very much enlarge myself; But here also, that I may not be a burden in repeating the same things, I desire the reader

\* "Quid molestiæ et tristitiæ ingerant prudentibus fratribus temerarii assertores, satis dici non potest." Aug. 1. de Gen. ad Lit. C. 19.

to look upon them in their proper places, where I doubt not but my answer will give him full satisfaction, that I did not the one, nor am the other.]

‘But, my lords, there are other strange arguments produced against me, to prove my compliance with Rome, which I most humbly desire your lordships may not be forgotten.

‘1. As, first, my lords, it hath been charged upon me, that I made the oath recited in the first of the late Canons; one clause whereof is this; “that I will never give my consent to subject this Church to the usurpations and superstitions of the Church of Rome.” Whence the argument drawn against me must be this, and can be no other: that I did endeavour to bring in Popery, because I made and took a solemn oath, never to give my consent to subject this Church of England to the usurpations and superstitions of the Church of Rome. I beseech your lordships mark the force of this argument; and they which follow are as pregnant against me.

‘2. Secondly, my Book against Fisher hath been charged against me; where the argument must lie thus: I have endeavoured to advance Popery, because I have written against it: and with what strength I have written against it, I leave posterity to judge, when the envy which now overloads me, shall be buried with me. This I will say with St. Gregory Nazianzen (whose success at Constantinople was not much unlike mine here, save that his life was not sought), “I never laboured for peace, to the wrong and detriment of Christian verity;” nor I hope ever shall. [And let the Church of England look to it: for in great humility I crave to write this (though then was no time to speak it), that the Church of England must leave the way it is now going, and come back to that way of defence which I have followed in my Book, or she shall never be able to justify her separation from the Church of Rome.]

‘3. Thirdly, all the late Canons have been charged against me; and the argument which is drawn from thence, must lie thus: The third of these Canons for suppressing the Growth of Popery, is the most full and strict Canon that ever was made against it in the Church of England; therefore I that made this Canon to keep it out, am guilty of endeavouring to keep it in.

‘4. Fourthly, I have by my industry, and God’s great blessing upon my labours, stayed as many from going, and reduced to the Church of England as many that were gone to Rome, as I believe any minister in England can truly say he hath done: I named them before, and had scorn enough put upon me for it, as your lordships could not but both see and hear; where the argument lies thus: I converted many from Popery, and settled them in the religion established in England; therefore I laboured to bring in Popery, which out of all doubt can be no sober man’s way.

‘5. Fifthly, the Plot discovered to sir William Boswell and myself, by Andreas ab Habernfield, hath been charged against me: That Plot for altering of religion, and by what ways, your lordships have heard already, and is to be seen at full in Rome’s Master-piece. Now if this Plot in the issue proved nothing but a confused information, and no proof of any particular, as indeed it did; what’s become of Rome’s Master-piece? But if it had any reality in it, as it appeared to be a sad Plot, not only to me, but to all men that saw the short propositions which were first sent, with an absolute undertaking to prove them; then it appears expressly, that I was in danger of my life, for stiffly opposing the bringing in of Popery; and that there was no hope to alter religion in England, till I was taken out of the way. And though in conclusion the proofs failed, yet what was consulted, and it seems resolved, concerning in me, is plain enough. And then the argument against me lies thus: There’s no hope to bring in Popery, till I am taken out of the way; therefore I did labour to bring it in. Do not these things, my lords, hang handsomely together?

‘6. Lastly, there have been above three-score Letters and other Papers, brought out of my Study into this honourable house; they are all about composing the differences between the Lutherans and Calvinists in Germany. Why they should be brought hither, but in hope to charge them upon them, I know not; and then the argument will be this: I laboured to reconcile the Protestants in Germany, that they might unanimously set themselves against the Papists; therefore I laboured to bring Popery into England.

‘Now that your lordships have heard the Arguments, and what proof they make against me, I must be bold to put you in mind of that which was said here at the bar, April 16, 1644. That they did not urge any of these particular actions as Treason against me; but the result of them altogether amounted to Treason. For answer to which, I must be bold to tell your lordships, that if no particular which is charged upon me be Treason, the result from them cannot be Treason; which will appear by these reasons following;

‘1. First, the result must be of the same nature and species with the particulars from which it rises. But it is confessed no one of the particulars are Treason: Therefore neither is the result that rises from them. And this holds in Nature, in Morality, and in Law.

‘In Nature, and that both for integral and essential parts; for neither can the body of a bear, and the soul of a lion, result into a fox; nor the legs of a bull, the body of a horse, and the head of an ass, result into a man.

‘In Morality, and that is seen both in virtues and vices: For neither can many actions of liberality, meekness and sobriety, rise up in a result of fortitude; neither can

‘many actions of malice, drunkenness and covetousness, result into Treason.

‘In Law it is so too; For be there never so many particular crimes, yet there is no law in this kingdom, nor any where else that I know, that makes a result of different crimes to be Treason, where none of the particulars are Treason by law. So this imaginary result is a monster in Nature, in Morality, and in Law; and if it be nourished, will devour all the safety of the subject of England, which now stands so well fenced by the known law of the land. And therefore I humbly desire your lordships, not for mine, but for the public’s sake, to weigh this business well, before this gap be made so wide, as there will hardly be power left again to shut it.

‘2. My second Reason is joined to the Answer of an Objection: For when this result was spoken of, it was added, that the particulars charged against me, are of the same kind, and do all tend to the Subversion of Law and Religion, and so become Treason. But, first, suppose that all the particulars charged, do tend to the Subversion of law, yet that cannot make them to be all of one kind: for all crimes tend more or less to the overthrow of virtue; yet no man can say, that all crimes are of the same kind. Secondly, be they of the same, or different kinds; yet neither all, nor any of these charged against me, do tend to the subversion of the law: for it is one thing to break, dislike or speak against some particular laws, and quite another to labour the subversion of the whole body of the law, and the frame of government. And that I have done this by conspiracy, force, or any overt action, is not so much as offered in proof: and for the breach of any particular law, if I be guilty, I am to be punished, by the sanction of that law which I have broken.

‘3. Thirdly, Whereas it hath been said, That many Actions of the same kind make a Habit: that is true: but what then? For, first, the actions urged against me are not of the same kind, but exceeding different. Secondly, if the habit be treasonable, then all those particular actions which bred that habit, must be several Treasons, as well as the result or habit itself; whereas it hath been granted all along, that my particular actions are not Treasons. And, thirdly, a habit in itself, neither is nor can be Treason; for all Treason is either Thought, Word or Overt-Act; but no habit is either of these, therefore not Treason. For a habit is that in the soul which inclines the powers of it, and makes a man apt and ready to think, speak, or do that to which he is habituated. [Tho. 1. 2 æ. q. 50. A. 5]. So an ill habit against Sovereign Power, may make a man apt and forward to fall into Treason; but Treason it is not.

‘4. Fourthly, Nor can this result be Treason at the common law, by which alone, I conceive, there is no Treason at all this day in England: for the main end of that excellent

‘statute of 25 Ed. 3, was for the safety of the subject, against the manifold Treasons which variously fell upon them by the common law; and bounded all Treasons, and limited them to the things expressed to be Treason in, and by that statute. And in all times of difficulty since, recourse hath still been had to that statute: and to that statute I refer myself, with this; That this result must be something within this statute, or some other known statute, or else it cannot be treason: and no proof at all hath been so much as offered, that this result is treason by any law.—My Lords, I do with all humble submission desire, that when the Reply is made to this Matter of Fact, a day may be assigned for my counsel to be heard in Matter of Law, in all and every particular which they shall find necessary for my just defence.

‘And now, my Lords, I do in all humility lay myself low at God’s Mercy-seat, to do with me as he pleases; and under God, I shall rely upon your lordships justice, honour, and clemency, of which I cannot doubt. And without being farther tedious to your lordships, who have with very honourable patience heard me through this long and tedious Trial, I shall conclude with that which St. Augustine said to Romanianus, a man that had tried both fortunes as well as I: “If the Providence of God reaches down to us, as most certain it doth, *Sic tecum agi oportet, sicut agitur*: It must so be done with thee, and so with me also, as it is done. And under that Providence, which will, I doubt not, work to the best to my soul that loves God, I repose myself.”

Here ended my RECAPITULATION, and with it the work of that day: and I was ordered to appear again the Saturday following, to hear Mr. Browne sum up the whole Charge against me. But upon Tuesday, Sept. 3, this was put off, to give Mr. Browne more time, to Wednesday, Sept. 11.

On Wednesday, Sept. 11, Mr. Browne made in the Lords House a Sum or Brief of the Charge which was brought against me, and touched, by the way, at some things in my Recapitulation. But in regard I might not answer him, I took no perfect notes, but stood still, and possessed my soul in patience; yet wondering at the bold, free, frequent, and most false swearing that had been against me. When Mr. Browne had ended, I humbly desired again, that my counsel might be heard in point of law. And they were hereupon ordered to deliver in writing under their hands, what points of law they would insist upon, and that by Saturday, Sept. 14.

This day my counsel, according as they were ordered, delivered into the Lords House these two Points following, by way of question: 1. Whether in all, or any of the Articles charged against me, there be contained any Treason by the established laws of this kingdom? 2. Whether the Charge of the said Impeachment and

Articles, did contain such certainty and particularity as is required by law, in a case where Treason is charged? This day I petitioned the lords, that my counsel might have access to, and take copies of all such Records as they thought necessary for my Defence; which was granted, and ordered accordingly.

My Counsel's Queries having been formerly sent down to the house of commons, they were there referred to a committee of lawyers to consider of: and on Friday, Sept. 27, they were earnestly called upon to hasten their Report. And on Friday, Oct. 4, Mr. Nicolas made a great noise about me in the house, and would have had me presently censured in the house; and no less would serve his turn, but that I must be *hanged*; and was at *Sus. per Coll.* till upon the reasons before given, that if they went on this way, they must condemn me unheard: this violent clamour ceased for that time. And a Message was sent up to the lords for my counsel to be heard, as touching the first Question concerning Treason; but not concerning any Exception that they shall take against the Articles in point of certainty. This Message the lords took into present consideration, and ordered it accordingly: and appointed the Friday following, being Oct. 11, for my counsel to be heard, and myself to be present.

This day, according to this Order of the Lords, I and my counsel attended. My counsel were Mr. Herne and Mr. Hale of Lincoln's-inn, and Mr. Gerard of Gray's-inn. When we were called into the house, and the lords settled in their places, Mr. John Herne,\* who was the man that spake what all had resolved on, delivered his Argument very freely and stoutly, proving that nothing which I have either said or done according to this charge, is Treason, by any known established law of this kingdom. The Argument follows in these words, according to the Copy which Mr. Herne himself delivered me: †

"My Lords; The work of this day, we humbly conceive, is in many respects of very great and high concernment. 1. In that it concerns matter of life, a thing of the highest consequence. 2. The life of an Archbishop, a person who had attained the highest dignity conferred in the Church of England. 3. Those

\* "The Lord Chancellor Finch told me, that this Argument was not Mr. Herne's, though he pronounced it, for he could not argue; but it was Mr. Hale's, afterwards Lord Chief Justice. And he said further, that being then a young lawyer, he stood behind Mr. Herne, when he spoke at the bar of the lords house, and took Notes of it; and that it will be published among his Reports." W. S. A. C.

† There is, in the Lambeth Collection, a second Copy of "The Defence made in the House of Lords by John Herne, esq. on the behalf of William Laud, Archbishop of Canterbury."

happy laws, many years since enacted and confirmed by several parliaments, to be the boundaries what was Treason; a crime before so various, as it had no bounds; and so odious, that the punishment of it was an infamous death, a total confiscation, with a brand of infamy to all posterity. 4. In that the Charge against him moves from no less a body than the whole Commons of England, which presents him now a prisoner at this bar before your lordships, in the high and supreme court of judicature in parliament.—And if any thing shall fall from us, subject to any doubtful construction, we shall humbly crave your lordships pardon, and leave to make our explication: for as there is upon us a duty to be wary, not to offer any thing which may minister just offence; so neither may we be unfaithful, to omit what may justly tend to our client's Defence.

"The Charge against him, we find to be made up of two several parcels of Articles, exhibited by the honourable house of commons. 1. The first, 'In maintenance of their Accusation, whereby he stands charged with High Treason.' 2. The latter, entitled, 'Farther Articles of Impeachment of High-Treason, and divers High Crimes and Misdemeanours; for all which matters and things they have impeached him of High-Treason, and other High Crimes and Misdemeanours, tending to the subversion of religion, laws and liberties, and to the utter ruin of this church and common-wealth.'

"Concerning this Charge, and the Archbishop's Defence he hitherto made before your lordships, we, by your lordships command assigned his counsel, neither have nor could, by reason of the mixed Charge, without distinguishing what was thereby intended to be a Charge of Treason, and what of Misdemeanour only, be farther useful to him, than to advise the form of his Plea and Answer, which we received from him, as to all the matters of fact, to be a Not Guilty.

"We have not in all or any the facts charged or evidenced against him, in any sort intermeddled. But the same, how proved and how applicable to the Charges, without mention of any of them, shall wholly leave to your lordships notes and memories.

"What Defence he hath offered hitherto, hath been wholly his own; he without us in that, and we without consulting him in the work of this day. Wherein, having received your lordships commands, we did present in writing the Points in Law we then humbly conceived fit for us to insist upon.

I. "Whether in all, or any the Articles charged against him, there was contained any Treason by the established laws of this kingdom.

II. "Whether the Charge of the said Impeachment and Articles, did contain such certainty and particularity, as is required by law in a case where Treason is charged.

"But being enjoined by your honourable Order, to speak only to the former; we shall, as in duty becomes, conform thereunto.

"For our method herein shall follow the course holden in the Reply made upon the whole Articles, whereby we conceived the Charges contained in them were reduced to these three generals:

"1. A traitorous endeavour to subvert the Fundamental Laws of the realm; and instead thereof, to introduce an Arbitrary and Tyrannical Government against law; contained in the first Original and first Additional Articles.

"2. A traitorous endeavour to subvert God's true Religion by law established; and instead thereof, to set up Popish Superstition and Idolatry; this contained in the seventh Original and seventh Additional Articles.

"3. That he laboured to subvert the Rights of Parliament, and the ancient course of parliamentary proceedings, and by false and malicious slanders to incense his majesty against parliaments. And this contained in the fourteenth Original and tenth Additional Articles.

"All other the Articles, we humbly conceive to be but instances, conducting and applied to some of those generals.

"Concerning those three General heads of the Charge, we shall crave leave to propose two Questions to be debated: 1. Whether there be at this day any other Treason, than what is declared by the Statute of 25 Ed. 3, c. 2, or enacted by some subsequent particular statute? which we humbly conceive, and shall endeavour to satisfy your lordships there is not any. 2. Whether any the matters in any of the Articles charged, contain any of the Treasons declared by that law, or enacted by any subsequent law? which we likewise conceive they do not. And for the clearing of both these, shall humbly insist, That, (1.) An endeavour to subvert the Laws, an endeavour to subvert religion, a labouring to subvert the Rights of Parliament; are not Treasons, either within the statute of 25 Ed. 3, or by any other particular statute. (2.) That not any of the particulars, instanced in any other the Articles, is a Treason within the statute 25 Ed. 3, or any other statute.

"And to make good our tenet upon our first Question, shall humbly offer, That before this statute of 25 Ed. 3, Treasons at the common law were so general and uncertain, that almost any crime, by inferences and constructions, might be, and was often extended to be a Treason; inasmuch as we find in 22<sup>d</sup> of the Book of Assize, killing the king's messenger was Treason. And in the Parliament-Roll, 21 Ed. 3, num. 15, accroaching the royal power, wherein every excess was subject to a construction of treason, was Treason; for which divers having suffered, the Commons in parliament finding how mischievous and destructive it was to the subject, petitioned it might be bounded and decared. And this, not to give any liberty, but to give bounds to it; one while it being construed an accroachment of royal

power, as in the case of the earl of Lancaster, temp. Ed. 2, for being over-popular with the people; and in the same king's reign to Spencer, for being over-gracious with the king.

"The sense of these and other mischiefs by the uncertainty of Treason, brought on this law of 25 Ed. 3. And the benefit of it to the subject, says sir Ed. Coke in his Treatise of the Pleas of the Crown, begot that parliament the name of *parliamentum benedictum*; and that except Magna Charta, no other act of parliament had more honour given it by the king, lords, and commons. And this law hath been in all times the rules to judge treasons by, even in parliament; and therefore in the Parliament Roll, 1 H. 4, num. 141, the Trial and Judgment in cases of Impeachment of Treason, is prayed by the commons might be according to the ancient laws. And in the Parliament-Roll 5 H. 4, num. 12, in the case of the then earl of Northumberland, this statute of 25 Ed. 3, was the guide and rule by which the lords judged, in a case endeavoured to have been extended to be a treason, the same to be no treason.

"And it is, as we conceive, very observable, That if at any time the necessity or excess of the times produced any particular laws in parliament, for making of Treasons not contained in that law of 25 Ed. 3, yet they returned and fixed in that law. Witness the statute of 1 H. 4, cap. 10, whereby all those facts which were made Treasons in the divided time of R. 2, were reduced to those of Ed. 3. In the time of H. 8, wherein several offences were enacted to be Treasons not contained in the statute of 25 Ed. 3, the same were all swept away by the statute of 1 Ed. 4, 12.—And again, where in the time of Ed. 6, several Treasons were enacted, they were all repealed, and by an act made 1 Maria, none other offence left to be treason, than what was contained and declared by the statute of 25 Ed. 3. And from 1 H. 4, to queen Mary, and from thence downward, we find not any judgment hath been given in parliament, for any Treason not declared and contained in that law, but by bill.—Thus in succession of all times, this statute of 25 Ed. 3, in the wisdom of former parliaments, hath stood and been the constant fixed rule for all judgments in cases of Treason.

"We shall now observe, what offences are in and by that law declared to be Treasons: whereby your lordships will examine, whether you find any of them in the Charge of these Articles: For which purpose we shall desire this statute of 25 Ed. 3, be read.—The Treasons by that act declared, are, 1. Compassing and imagining the Death of the king, queen, or prince, and declaring the same by some overt-act. 2. Murdering the Chancellor, Treasurer, &c. 3. Violating the queen, the king's eldest daughter, or the prince's wife. 4. Levying war against the king. 5. Or adhering to the king's enemies, within the realm or without, and declaring the same by some overt-act. 6. Counterfeiting the Seals and Coin. 7. Bringing in Counterfeit Coin.

"Next we shall lay for a ground, that this act ought not to be construed by equity or inference. 1. For that it is a declarative law, and no Declaration ought to be upon a declaration. 2. It was a law provided to secure the Subject, for his life, liberty, and estate; and to admit constructions and inferences upon it, were to destroy the security provided for by it.

"It hath been the constant opinion in all times, both in Parliament and upon judicial Debates, that this act must be literally construed, and not by inference or illation: nor would it be admitted in a particular declared by this law to be Treason; which a man would have thought might have been consistent with it.

"Counterfeiting the Coin of the kingdom, is by this law declared treason.

"Washing, filing, and clipping the Coin, is an abuse, an abusing, and not making it current: yet in 3 H. 5, when the question was in Parliament, whether that offence was Treason within the statute of 25 Ed. 3, it is declared by a special act then made, 3 H. 5, c. 6, That forasmuch as before that time great doubt and ambiguity had been, whether those Offences ought to be adjudged Treason, or not, inasmuch as mention is not thereof made in the Declaration of the Articles of Treason by that statute of 25 Ed. 3, the same was by that particular act made treason, which before was none: and counterfeiting of foreign coin made current here, an equal mischief with counterfeiting of the coin of this realm; yet because the words of the statute are 'his money,' this not Treason until the act of 1 Maria, cap. 6, made it so. And sir Ed. Coke,\* in his Book before-mentioned, saith, 'A compassing to levy war, is not a Treason within that law, unless it proceed into act; but only to compass the death of the king: yet if a constructive Treason should be admitted, it might happily, without any great straining, be inferred, That compassing to levy war is in some sort a compassing of the king's death: and of this kind many more instances may be given.—So that the result of all this is, That whatsoever is not declared to be a Treason within the letter of this law, may not be adjudged a treason, by inference, construction or otherwise.

"Having done with this first, we now shall come to our second Question. Whether any the matters in all, or any the Articles charged, contain any the Treasons declared by that law, or enacted by any subsequent law? wherein, although the Charges may appear to be great and enormous crimes; yet we shall endeavour, and hope to satisfy your lordships, the same, nor any of them, are treasons by any established law of the kingdom. For clearing whereof we shall pursue the order first proposed.

"First, That an endeavour to subvert Fundamental Laws, is not Treason by any law in this kingdom established: and particular act

to make it Treason there is none; so as we must then return to apply those former general Observations of that act of 25 Ed. 3, to this particular; and shall add for Reasons,

1. "That it is not comprized within any the words of that law, nor may by any construction or inference be brought within it, for the reasons formerly alledged.

2. "Because an endeavour to subvert Laws, is of so great a latitude and uncertainty, that every action not warranted by law, may be thereby extended to be Treason.

"In the sixth Report, in Mildmay's Case, fol. 42,\* where a Conveyance was made in tale, with a Proviso, if he did go about or attempt to discontinue the entail, the same should be void: It was resolved the Proviso was void; and the principal reason was, That these words, 'attempt or go about,' are words uncertain and void in law. And the words of the Book are very observable, viz. 'God defend, that inheritances and estates of men should depend upon such uncertainties; for that 'misera est servitus, ubi jus est vagum, et 'quod non definitur in jure quid fit conatus;' and therefore the rule of the law doth decide this point. 'Non efficit conatus nisi sequitur 'effectus;' and the law doth reject conations and goings about, as things uncertain, which cannot be put in issue.' These are the Words of the Book: and if so considerable in estates, your lordships, we conceive, will hold it far more considerable in a case of life, which is of highest consequence.

"And if it should be said this law of 25 Ed. 3, takes notice of compassing and imagining: We answer, it is in a particular declared by that law to be Treason, in compassing the death of the king: but this of endeavouring to subvert laws, not declared by that or any other law to be a Treason. And if it should be granted, that this law might in any case admit any other fact to be Treason by inference or construction, other than is therein particularly declared, which we conceive it cannot:

"Yet it is not imaginable, that a law introduced purposely to limit and ascertain crimes of so high consequence, should by construction or inference be subject to a construction of admitting so uncertain and indefinite a thing, as an endeavour to subvert the law is, it being not comprized within the letter of that law.

3. "That the subversion of the law is an impossible thing; therefore an endeavour to do an act which cannot be effected, cannot be treason.

4. "That in all times the endeavouring to subvert the Laws hath been conceived no determinate crime, but rather an aggravation only of a crime than otherwise: and therefore hath been usually joined as an aggravation or result of crimes below Treason.

"As appears in the Parliament-Roll, 28 H. 6, num. 28 to num. 47, in the Case of the duke of Suffolk, where the Commons in Parliament

\* Coke's Pleas of the Crown.

\* Mildmay's Case, 6 Report. Coke, fol. 42.

having preferred Articles of Treason against him, did not make that any part of their charge.\* Yet in the same parliament, and within few days after, the first being in February, the latter in March, exhibiting other Articles against him, they therein charged all the misprisions, offences, and deeds, therein mentioned, to have been the cause of the subversion of laws and justice, and the execution thereof; and high likely to tend to the destruction of the realm. So as it appears it was then conceived an offence of another nature, and not a Treason.

"And it appears as well by the Articles exhibited in parliament, 21 H. 8, against cardinal Wolsey,† as by indictment in the King's-bench against Ligham 23 H. 8, rot. 25, That the Cardinal did endeavour to subvert 'Antiquissimas leges hujus regni, universumque hoc regnum Angliæ legibus imperialibus subjugare:' which although it be a charge of subverting the ancient laws of the kingdom, and to introduce new and arbitrary laws; yet neither upon the Articles or Indictment was the same imputed to be Treason; but ended in a Charge of a Premunire.

"And if it shall be said, that Empson,‡ 1 H. 8, had Judgment, and died for it; upon an indictment in London; we answer, 1. This was not the substance of the Indictment, but only an aggravation. 2. And if charged, it is with an actual subverting, not with an endeavour to subvert the laws; and is joined with divers offences. 3. Which is a full Answer, The Indictment upon which he was tried, was Paschæ, 2 H. 8, at Northampton, and was for levying war against the king, a Treason declared by the law of 25 Ed. 3, upon which he was convicted and suffered; and no proceeding upon the other indictment ever had.

"And as to the second general Charge of endeavouring to subvert Religion: This no more than that former of subverting the laws is any Treason, within any law established in this kingdom.

"And herein as to the Charge of the Endeavour, we shall rely upon what hath been already said upon the former. With this further; That until that happy Reformation, begun in the time of king Edward 6, there was another frame of religion established by law; which was conceived until then to have been the true Religion; and any endeavour to change or alter it, prosecuted with great extremities. Yet was not any attempt to alter it conceived to be Treason; but several special acts of parliament were made for particular punishments against persons who should attempt the alteration thereof; witness the statute of 5 R. 2. c. 5. and 2 H. 5. c. 7. In which latter, although mention is made of endeavouring to destroy and subvert the Christian faith, yet was not the offence made or declared to be

Treason. And at this day heresy, of what kind soever, is not punishable, but according to the old course of the law.—And we may add the statute of 1 Ed. 6. c. 12. that of 1 Mar. 12. which makes it but felony to attempt an alteration of religion by force: The worst kind of attempt, certainly.

"To the third and last general Charge, labouring to subvert the Rights of Parliaments. To the labouring to do it, we shall add nothing to what hath been said to the Charge of Endeavour in the two former; only thus much, we shall observe: That in the parliament of 11 R. 2. amongst the many articles preferred against the Duke of Ireland,\* and others, the 14th article contains a Charge, much of this nature, viz. 'That when the lord and others in divers parliaments, had moved to have a good government in the realm, they had so far incensed the king, that he caused divers to depart from his parliament; so that they durst not for fear of death, advise for the good of the kingdom.' Yet when the lords came to single out the Articles, what was, or what was not Treason, that, although a charge transcending this, was none of the Articles by them declared to be Treason.

"My lords, having done with these Generals, it remains only that we apply ourselves to those other Articles, which we conceive were insisted upon as Instances conducing and applied to some of the Generals we have handled.

"Wherein, if the General's be not Treason, the particular Instances cannot be: and on the other side, if the Instances fall short of Treasons, the application to those Generals cannot make them Treasons.

"We shall only single out two Particulars, and in those be very brief, in that most which hath been said to the former Generals is applicable to them; inasmuch as none of them is declared to be a Treason by the statute of 25 Ed. 3. or by any other law enacted. 1. The first of these in the 10th Original Article, viz. 'That he hath traitorously endeavoured to reconcile the Church of England with the Church of Rome.' Which, if it be any Treason, must be a Treason within the statute of 5 Jac. c. 4, whereby is provided, That if any man shall put in practice to reconcile any of his majesty's subjects to the Pope or see of Rome, the same is enacted to be Treason; which we conceive clearly is none of this Charge. (1.) First, for that here only is charged an Endeavour; there a putting in practice. (2.) Here a reconciling of the Church of England with the Church of Rome; there a reconciling some of his majesty's subjects to the See of Rome. And a reconciling with, may as well be a reducing of that of Rome to England, as England to Rome.

"The second, in the 7th Additional Article, for wittingly and willingly receiving and har-

\* See No. 23, vol. 1, p. 271.

† See No. 29, vol. 1, p. 367.

‡ See No. 26, vol. 1, p. 283.

\* See No. 12, vol. 1, p. 89.

bouring divers popish priests and jesuits, namely, Sancta Clara and monsieur St. Giles. Which Offence, as to the harbouring Priests and Jesuits born within his majesty's dominions, by the statute of 27 Elis. cap. 2. is made Felony, not Treason; and extends only to priests English born, which these are not charged to be.

"My Lords, we have now gone through those Articles wherein we conceive the Treasons charged were intended, and have endeavoured to make it appear, that none of the matters in any of the Articles charged are Treason within the letter of any law. And if not so, then they cannot, by Inference or parity of reason, be heightened to a Treason. It is true, the crimes as they are laid in the Charge are great and many. Yet if the laws of this realm, which have distinguished crimes, and accordingly given them several names and inflicted punishments, raise none of these to a Treason; That we humbly conceive will be worthy of your lordships consideration in this case; and that their number cannot make them exceed their nature. And if they be but Crimes and Misdemeanours apart, below Treason or Felony, they cannot make a Treason by putting them together.

"Otherwise the Statute of 25 Ed. 3. which we have so much insisted upon, had been fruitless and vain; if after all that exactness any number of misdemeanours (in themselves no Treason) should by complication produce a Treason, and yet no mention made of it in that law, much less any determination thereby, that any number, or what number, and of what nature of crimes, below Treason, should make a Treason.

"It is true, my lords, that by the Statute of 25 Ed. 3. there is a clause in these words:

"It is accorded, That if any other case, supposed Treason, which is not therein specified, doth happen before any justices, the justices shall tarry without any going to judgment of the Treason, until the cause be shewed and declared before the king and his parliament, whether it ought to be judged Treason or Felony." And that hereby might seem to be inferred, That there should be some other Treasons than are mentioned in that law, which may be declared in parliament.

"But, my lords, we shall observe, 1. If such Declaration look only forward, then the law, making it Treason, precedes the offence, and is no more than an enacting law.—If it look backward to the Offence past, then it appears by the very clause itself of 25 Ed. 3, it should be at the least a Felony at the common law; and that a crime or crimes below a felony, were never intended to be by this law to be declared, or to be heightened to a treason. And we find not any crime declared Treason with a retrospect, unless it were a felony before. And in the late case of the earl of Strafford, attainted by bill, there is a treason within this law charged, and declared by the bill of his attainder to have been proved. 2.

We are not now in case of a declaration of a Treason, but before your lordships only upon an Impeachment; and in such case we humbly conceive the law already established, as it hath been, so it will be the rule.\*

"Thus, my Lords, we have gone through that part which belongs to us, directed us by your lordships, viz. Whether in all or any the Articles exhibited before your lordships, there is contained any treason by any established law of this kingdom, without meddling at all with the facts or proof made of them; which, together with our weak endeavours, we humbly submit to your lordships great judgment. And for any Authorities cited by us, are ready (if so commanded) to produce them."†

\* This which followeth, I transcribed from a loose Note, wrote by an unknown hand, and affixed to this place. H. W. 'Concerning the Proviso in 25 Edw. 3, (last mentioned) it is observable, that Mr. Lane, in the lord Strafford's Trial, saith, That that Clause of Proviso in 25 Edw. 3, is quite taken away by 6 Hen. 8, cap. 4, and 20. So that no Treason is now to be reckoned, but what is literally contained in 25 Ed. 3. See for this Whitlock's Memoirs, p. 48. See also Burnet's Hist. Reform. part 2, p. 253, about the Repeal of Treasons.'

† "To which Serjeant Wild in behalf of the Commons replied thus, viz. 'Mr. Herne, we did never alledge that any one crime of the Bishop's did amount to a Treason or a Felony, but we do say, that all the Bishop's Misdemeanours put together, do, by way of accumulation, make many grand Treasons.' To which Herne answered, 'I crave your mercy, good Mr. Serjeant; I never understood before this time, that two hundred couple of black rabbits would make a black horse.'

"Archbishop Laud being condemned by the Long Parliament, two days before his death, Mr. Herne, his counsel, went to take his leave of him in the Tower, where the Bishop gave him to peruse the Speech he afterwards delivered upon the Scaffold, his grace walking to and fro in the room whilst he was reading it at the table, and observing him to make a stop with his finger upon the paper, would not suffer him to proceed, till he told him the occasion; the passage was this, 'and though I am not only the first Archbishop, but the first man, that ever died, by an Ordinance of Traitors:' for so it was in the Bishop's first writing; which term he did then resolutely maintain, nor would he, but upon great importunity, be persuaded to alter it; yet afterwards suffering the word 'Parliament' to be inserted in the room of 'Traitors,' being prevailed with thereunto by his counsel, in that his majesty himself had vouchsafed to own them for such, the more fairly to draw them to the ensuing Treaty at Uxbridge, to which the Archbishop prayed all good success.—At the same time his grace observing his counsel to have taken notice of some present discomposure in him, he then de-

Here this Day ended ; and I had a few days rest. But on Tuesday, Oct. 22, being a day made solemn for Humiliation, my chamber at the Tower was searched again for Letters and papers; but nothing found.

After this, there went up and down all about London and the suburbs, a Petition for the bringing of Delinquents to justice; and some preachers exhorted the people to be zealous in it, telling them it was for the glory of God, and the good of the Church. By this means they got many hands of men which little thought what they went about. In this Petition, none were named but myself and the bishop of Ely: so their drift was known to none but their own party; and was undoubtedly set on foot to do me mischief. Whose design this was, God knows; but I have cause to suspect Mr. Pryn's hand in it. This barbarous way of the people's clamouring upon great Courts of Justice, as if they knew not how to govern themselves and the causes brought before them, is a most unchristian course, and not to be endured in any well-governed state. This Petition, with a multitude of hands to it, was delivered to the house of commons on Monday, Oct. 28. Concerning which I shall observe this, That neither the Lord-mayor nor the sheriffs made any stop to this illegal and blood-thirsty course, though it were publicly known, and the people exhorted to set hands to it in the parish-churches. What this, and such-like courses as these, may bring upon this city, God alone knows, whom I humbly pray to shew it mercy.

November 1. This day, being All-hallow-day, a Warrant came to the lieutenant from the house of commons to bring me to their bar, to bear the Evidence formerly summoned up, and given against me in the Lords house. I knew no law nor custom for this; for though our Votes, by a late act of parliament, be taken away, yet our baronies are not: and so long as we remain barons, we belong to the Lords house, and not to the commons. Yet how to help myself, I knew not: for when the warrant came to me, the Lords house was risen, and I was commanded to the House of Commons the next morning before the lords came to sit; so I could not petition them for any privilege. And had I done it, I doubt it would have been interpreted for an endeavour to make a breach between the houses: and should I have under-

clared; that he was indeed somewhat affected, but protested that his trouble proceeded more from his fear for the King, than for any thing that related to his own death. 'I am,' said the Bishop, 'to die this tenth of January; but I am very much afraid that this month of January will also prove fatal to my master the King, and I pray God it do not.' The Defence, with these two passages, are written verbatim according to that under my grandfather's hand. JO. HERNE."

From the MS. in the Library of Lambeth Palace.

any pretence refused to go, Mr. Lieutenant would have carried me.

Therefore on Saturday, Nov. 2, I went, according to the warrant, to the House of Commons. So soon as ever I was come to the bar, Mr. Speaker told me, There was an Ordinance drawn up to attain me of High-Treason; but that they would not pass it till they had heard a Summary of the Charge which was laid against me; and that I was sent for to hear it also. I humbly besought them that my Counsel and my Solicitor (who were always present with me in the lords house) might stand now by me: but it would not be granted. Then Mr. Browne, by order from the Speaker, delivered the Collection and Sum of the Charge against me; much as one with that which he formerly made in the Lords house. Now I took Notes of it as exactly as I could. He had no sooner done, but Mr. Speaker pressed me to make Answer presently. I humbly besought the house I might not be put to that, the Charge being long and various; but that I might have time, and that my counsel might be heard for matter of law. I was commanded to withdraw. And when I was called in again, I received an Order peremptory, to answer the Monday sevennight after to such things as the reporter was mistaken in. But not a word of hearing my counsel. I returned to my prison.

This Wednesday, November 6, I got my Prayer-Book, by the help of Mr. Herne and Mr. Browne, out of Mr. Pryn's hands, where it had been ever since the last of May, 1643.

## MY DEFENCE

### IN THE HOUSE OF COMMONS.

Monday, November 11, I came to the house of commons again; and, according to their peremptory order, made my Answer to the Summary Charge which Mr. Browne made against me. But here I shall advertise the reader, That, to avoid troublesome and tedious repetition, I shall not set down my Answer at large, as there I spake it; because there is nothing in it but what is in my former Answers, the beginning and the end only excepted. But it was necessary for me then to make a whole and an entire Answer, because the house of commons had then heard no part of my Defence. But I presume the charitable Reader will look upon my Answers in their proper place, rather than be troubled a second time with the same thing. Yet because Mr. Browne went a different way in his Summary from the Charge lately given, I shall represent a skeleton of my Answer, with all the limbs of it intire, that it may be seen, as it were, together; though I report nothing which hath been already said. And thus I began:

"Mr. Speaker, I was here November 2. It was the first time that ever I came within these doors. And here then you gave me the most uncomfortable breakfast that ever I came to; namely, that this honourable house had drawn up an Ordinance against me of High-Treason:

but that before they would proceed farther, I should hear the sum of the charge, which was against me, which was the cause I was sent for then: and to give my Answer to that which was then said, or rather mistaken in saying and inferring, is the cause of my coming now.

“1. And, first, Mr. Speaker, I give thanks to this honourable house that they have given me leave to speak for myself. 2. I do humbly desire, if any word or thing should be mistaken or unadvisedly expressed by me, (which shall be sore against my will) I may have liberty to recall and expound myself. 3. That you will favourably consider into what straits I am cast, that after a long and tedious hearing, I must come to answer to a sum or an epitome of the same charge; which, how dangerous it may be for me, all men that know epitomes cannot but understand.

“Mr. Speaker, I am come hither to make a Brief of my Answer to a Sum of my Charge; wherein I may receive as much detriment by my own brief, for want of larger expression, as by the other of my Charge by omission or mistake: yet since your command is upon me, I shall without farther preface (which I conceive would be as tedious to you, as to me troublesome) address myself, and with as much brevity as the many Heads of the Charge will bear. And that my Answer may be the clearer both to this honourable house and to the gentleman who reported the Charge, I shall follow every thing in the same order he proceeded in: so far forth, at least, as an old slow hand could take them, a heavy heart observe them, and an old decayed memory retain them.

“This worthy gentleman hath pressed all things as hardly against me, as the cause can any way bear. That was his duty to this honourable house, and it troubles me not: but his carriage and expressions were civil towards me, in this my great affliction; and for this I render him humble and hearty thanks, having from other hands pledged my Saviour in gall and vinegar, and drunk up the cup of the scorings of the people to the very bottom.

“This gentleman began with four Generals, which he said I complained of, and I say I had cause so to do. 1. The First Complaint was, ‘That I had lain three years in Prison before I was heard.’ And this, he said, was my own fault, because I delayed the putting in my full Answer when I was called. But herein he is quite mistaken: For I could not answer till I was called, and I was not called in three years; nor then could I plead to more Articles than were put to me.’ [Nor did this delay three months of the three years: yet this gentleman in his Reply said still, it was my fault, ‘because I did not petition to be brought to hearing.’ But this, under favour, is a weaker reason than the former. For the condition of the times considered, neither my counsel, nor my other friends, nor myself, could think that a fit or a discreet way. Besides, it is well known, that had I petitioned I could not have been heard, my business being in a manner cast aside, till

Mr. Prynn’s malice, actuated by a search into my own Papers, undertook it.] 2. The gentleman said, my second Complaint was, ‘That my Papers were seized.’ But he said, that was done by authority. And I never denied that: But that which he added is much mistaken; namely, That I ever seized any man’s Papers without authority, or by my own power; but what was done in that kind, was by the joint authority of that Court in which I then sat. Nor was my complaint general, that my Papers were seized; but that the Papers prepared for my Defence were taken from me, and not restored when I needed them, and petitioned for them. 3. He said, my third Complaint was, ‘That many of the Witnesses produced against me were Separatists.’ I did indeed complain of this, and I had abundant cause so to do: For there was scarce an active Separatist in England, but some way or other his influence was into this business against me. And whereas the gentleman said, ‘The Witnesses were some Aldermen, and some gentlemen, and men of quality.’ That’s nothing; for both gentlemen, and aldermen, and men of all conditions, (the more’s the pity) as the times now go, are Separatists from the doctrine and discipline of the Church of England established by law. And I would to God some of my Judges were not. 4. My fourth Complaint, he said, was, ‘of the excessive number of the witnesses.’ And he added, ‘That if I would not have so many witnesses, I should not have given occasion for it, by committing so many crimes. But, first, whether I have committed so many crimes as are urged against me, is yet in question. And secondly, it is one thing to give cause, and another thing to give occasion: For an occasion may be taken when it is pretended as given. And so I hope it will be found in my case. But the thing here mistaken is, That these are all said to be ‘legal Witnesses;’ whereas almost all of them have at some time or other been before me as their judge, either at Star-chamber, or Council-table, or High-Commission, or as referee. And then I humbly desire it may be considered; 1. How impossible it is for a judge to please all men. 2. How improbable it is, that Witnesses displeased should be indifferent in their testimony. And, 3. how hard it is to convince a man by such interested witnesses, now (upon the matter) becoming judges of him that judged them. And (as St. Augustine speaks) ‘*Quomodo potest*,’ how is it possible for one ‘that is contentious and evil to speak well of his Judge?’

“From these Generals the gentleman passed to the particulars of the Charge: and he caused the 7, 8, 9, 10, 11th Original Articles, and the 7th Additional to be read. That done, he divided the Charge into two main heads: The one, an Endeavour in me to subvert the Laws of the kingdom; and the other, a like endeavour to alter the true Protestant Religion into Popery. The Evidence

given in the Lords house, began at the Laws and ended in Religion; but this gentleman in his Sum, both there and here, began with Religion, and ended with the Laws.

"1. The Charge concerning Religion, he said, would bear two parts; the Ceremonial, and the Substantial Part of Religion.

"(1) and he professed he would begin at the Ceremonial; where having first charged in general, the Statute of the 3 and 4 of Ed. 6. c. 10. for the destruction of Images, he gave these particular Instances following, to shew my intention to alter Religion.

"1. The setting up of coloured Glass with Pictures in the Windows of my Chapel; the Communion-Table altar-wise; Candlesticks thereon, with Reverence and Bowings.

"2. A Bible in my study with the five wounds of Christ wrought upon the cover in needle-work.

"3. Three Pictures in my gallery; the *Ecce Homo*, the four Latin Fathers, and the History of, (St. John x.) the true Shepherd entering in by the Door, and the Thief by the Window.

"4. The Crucifix hung up in the Chapel at White-hall on Good-Friday; and what happened there upon Dr. Browne's coming in and doing Reverence.

"5. The Copes and Bowings used in Cathedral-Churches since my time. The Ceremonies used at his majesty's Coronation.

"7. The Abuses in the Universities, especially Oxford. 1. The Titles given me from thence, 2. Divers Particulars in the new Statutes. 3. Images countenanced there, by me, in divers Chapels. 4. The Picture of the Virgin Mary at St. Mary's church-door. 5. Nothing to be done without me in congregations.

"8. The Ceremonies in some parish churches, and some punished for neglect of them. Instances in some of Beckington, some of Lewes, and in Mr. Chanoy of Ware.

"9. That I preferred no men, but such as were active for the Ceremonies.

"10. Passages expunged out of Books, if contrary to these courses; as that in Dr. Fearly's Sermons concerning Images.

"11. Bibles with Pictures in them.

"12. The severe Punishment of Mr. Workman of Gloucester, only for a Sermon against Images.

"13. Words spoken to take Bishop Jewell's Works and the Book of Martyrs out of some parish-churches.

"14. The Consecration of Cree-Church, and St. Giles in the Fields. In all which, as I humbly conceive, here is nothing, especially my Answers being taken to them, that can co-operate to any alteration of Religion. Nor is there any Treason, were all that is urged true.

(2.) "From hence, Mr. Speaker, this worthy gentleman passed over from the Ceremonies, to those things which, he said, concerned the substance of Religion: in which the Particulars which he charged were these:

"1. A doubtfulness, if not a denial of the Pope's being Antichrist.

"2. Dislike of the name, 'the Idol of Rome.'

"3. The Alteration of some Passages in the Public Prayers appointed for Nov. 5, and the Coronation Day.

"4. The Antichristian Yoke left out of the Brief for the Palatinate, with an Expression, as if we and those Reformed Churches were not of the same religion.

"5. That men were punished for praying for the Queen and Prince.

"6. That the Church of Rome is a true Church.

"7. That the Communion-Table or Altar is the chief place; for there is *Hoc est Corpus meum*.

"8. Restraint of all Books against Popery, instances in a Book of bishop Carleton's: one tendered by sir Edward Hungerford. Dr. Clarke's Sermons. Dr. Jones. None called in but Sales. That I myself did expunge some Passages out of a Sermon of Dr. Sibthorp's. Popish Books seized, re-delivered to the owners. That for these I must answer for my chaplains, since John, archbishop of York, was fined for his Commissary Act against the bishop of Durham; who having a Patent, could not so easily be put out of his place, as I might change my chaplains.

"9. Three ministers in my diocese suspended for not reading the 'Book of Recreations' on the Lord's-Day.

"10. The Peoffinent for buying in of Impropositions overthrow, to the hindrance of Preaching, and scandal to Religion.

"11. Incroachment upon the Lord Chamberlain for naming of Chaplains to the king; and upon the Master of the Wards for giving of benefices.

"12. Familiarity with Priests and Jesuits, S. Clara and M. S. Giles.

"13. The testimonies of Mr. Chaloner, sir Henry Mildmay, and his brother Mr. Anthony, what opiion was held of me beyond the Seas, for my cunning introducing of Popery.

"14. That an offer was made unto me to be a Cardinal. And thus far this gentleman proceeded in points of Religion.

"But because there hath passed divers things done at and by the Council-Table, the courts of Star-Chamber, and High Commission, and in Convocation; and because many more things so done, are to come in the next Head concerning the Law; I humbly crave leave, for avoiding tedious repetition, to say it once for all, That no act done by any of these, either by full consent, or major part, which involves the rest, ought to be charged singly against me: and that for these Reasons following:

"1. Because this is not *peccare cum multis*: for they meet not there in a relation as *multi*, but as *unum ageregatum*, as bodies made one by law. And therefore the acts done by them, are acts of those bodies, not of any one man sitting in them. And in this sense a parliament is one body consisting of many; and the acts

done by it are acts of parliament. For which, should any of them prove amiss, no one man is answerable, though many times one man brings in the bill.

"2. Because I could sway no man's Vote in any of those places (though this hath been often urged against me, as an *over-potent Member*), for my Vote was either last, or last save one, in all these places; so I could not lead. Nor is there any so much as shew of proof offered, that I moved, or prepared any man to a Sentence one way or other, in any one of these courts or places.

"3. Because in those courts of judicature, there was the assistance of able judges, lawyers and divines for direction. And how can that be a Treason in me, which is not made so much as a Misdemeanor in any of the rest?

"4. Because the act of this present Parliament, which hath taken away the Star-Chamber, and the High-Commission, and bounded the Council-Table, looks forward only, and punishes no man for any act past; much less doth it make any man's actions done in them to be treason: and I am no way excluded from the benefit of that act.

"5. Lastly, Because in all my proceedings, both in the High Commission and elsewhere, I kept strictly to the doctrine and discipline of the Church of England established by law, against both Papists and other Sectaries. And under this government, and doctrine of this Church, it hath pleased God, now for above fourscore years together, to bless this kingdom and people above other nations. And I pray God, if we forsake the one, it prove not a cause to deprive us of the other.

"II. And now, Mr. Speaker, I shall follow this worthy gentleman, as he went on to the second General Head, 'the Subversion of the Laws.' And here, when he had caused the 1, 2, 3, 5, and 14th Original Articles to be read, as also the 2, 9, and 10th Additionals; he then said, That I had laboured this Subversion by my counsels, and by my actions.

"(1.) By my Counsels first; of which he gave three instances. 1. The Vote of the Council-Table to assist the king in extraordinary ways, if the Parliament should prove peevish, and refuse: and this out of my Diary at Dec. 5, 1639. 2. The Passage in the Epistle before my speech in the Star-Chamber; 'Not one way of government, since the humours of the people were in continual change.' 3. A Speech at Council-Table, 'That now the king might use his own power,' &c. witnessed only by sir Henry Vane the elder.

"(2.) From my Counsels, proceed was made to my Actions; where the Particulars were: 1. That I attempted to set Proclamations above the Law. 2. That I was for all illegal Projects at the Council Table; instanced in Inclosures, in Ship-money, and sir John Corbet's commitment. 3. The taking down of the houses about St. Paul's, with the large commission for the repair of the west-end. 4. The stopping

of two Brewers in their trade, being in Westminster, and pretended to annoy the court. 5. Things done by me as Referee; instanced in a Case between Rich and Pool, and another of one Symmes. 6. Obstructing the course of law, by sending to Judges; instanced in the parishioners of Beckington, in the Case of Ferdinando Adams; in sir Henry Martyn's case about an Attorney at Law; judge Richardson's words in Hundley's case, and baron Trevor's words in Grafton's case. 7. The punishing men that came in a legal way; instanced in the case of Newcomin and Burrowes; that I said in the High Commission, I hoped to see the clergy exempt again the next hundred years: the two church-wardens of Chesham, with words concerning sir Thomas Dacres. 8. The Case of Prohibitions; and Mr. Wheeler's Note out of a Sermon of mine concerning them. 9. That no Pope ever claimed so much jurisdiction, not from the king. 10. The Canons; and I the main man; the overgrown member again. 11. The Statutes of Oxford enforced a second time; Nevil's case of Merton-college instanced in. 12. Books printed that are against the law; instanced in Cowell's Interpreter, and Dr. Manwaring's Sermons. 13. The Alteration of the King's Oath at his Coronation. 14. My enmity to Parliaments.

"To all which, as I then gave sufficient Answers, so I hope the courteous Reader hath found them at large in their several places. And for this last concerning Parliaments, I humbly and heartily desire, that this may be taken notice of and remembered, That there is not in any one of these Paper-Proofs produced against me, any one thing that offers to take away any Rights of Parliaments, rightly understood; much less any that offers to take away Parliaments themselves; which is a continued mistake all along this particular Charge. And if any rash or unweighed words have fallen from me, yet these cannot be extended to the disannulling of Parliaments, or their privileges in any kind, which I defended in print long since, before I could foresee any of this danger threatening me. It is in my Book against Fisher; [p. 211.] It was read in the Lords house, and I humbly desire I may read it here. And it was read.

"After this, it was inferred by this worthy gentleman, what a great offender I was, and 'greater than Cardinal Wolsey.' Mr. Speaker, I have seen the Articles against the Cardinal, and sure somebody is mistaken; for some of them are far greater than any thing that is proved against me. In which, I thank Christ for it, my conscience is at peace; whereas the Cardinal confessed himself guilty of them all, and yet no thought of Treason committed; and a premunire was all that was laid upon him.

"Then he gave a touch, That in Edward 3's time, anno, 45, there was a Complaint that too much of the civil government was in the hands of the Bishops; and that in the 45th year of his reign, they were put out, and lay-

men put in. But 1. This concerns not me. 2. The late Act of this parliament hath taken sufficient order with that calling for meddling in civil affairs. 3. The time is memorable when this was done: it was in the 45th year of Edward 3; that's enough.

"Mr. Speaker, I shall draw towards an end. Yet not forgetting what Ordinance you told me was drawn up against me; if that which I have now said may any way satisfy this honourable house to make stay of it, or mitigate it, I shall bless God and you for it. And I humbly desire you to take into consideration my calling, my age, my former life, my fall, my imprisonment, long and strict; that these considerations may move with you. In my prosperity (I bless God for it) I was never puffed up into vanity, whatever the world may think of me. And in these last full four years durance, I thank the same God, *'gravem Fortunam constanter tuli'*;\* I have with decent constancy borne the weight of a pressing fortune; And I hope God will strengthen me unto and in the end of it.

"Mr. Speaker, I am very aged † considering the turmoils of my life; and I daily find in myself more decays than I make shew of: and the period of my life, in the course of nature, cannot be far off. It cannot but be a great grief unto me, to stand at these years thus charged before ye: Yet give me leave to say thus much without offence, Whatsoever errors or faults I may have committed by the way, in any my proceedings through human infirmity; as who is he that hath not offended, and broken some statute-laws too by ignorance, or misapprehension, or forgetfulness, or some sudden time of action? Yet if God bless me with so much memory, I will die with these Words in my mouth: *'That I never intended, much less endeavoured the Subversion of the Laws of the kingdom, nor the bringing in of Popish Superstition upon the true Protestant Religion established by Law in this kingdom.'*

"And now, Mr. Speaker, having done with the Fact, I have but this one thing to put to the consideration of this honourable house. My Charge hath been repeated, I confess, by a very worthy and a very able gentleman: But ability is not absolute in any. The Evidence given against me before the lords, was (as by the law it ought to be) given in upon oath: but the Evidence now summed up, and presented to this honourable house, is but upon the collection and judgment of one man how able or intire soever: and what he conceived is proved against me, is but according to his judgment and memory; which perhaps may differ much from the opinion and judgment of the Judges themselves, who heard the Evidence at large. Nor was this gentleman himself present every day of my Hearing; and then for those days in which he was absent,

he can report no more here, than what others have reported to him. So for so much, his Repetition here is but a Report of a Report of Evidence given; and at the best but a Report of Evidence, and not upon oath. And, I suppose, never any Jurors, who are Triers of the Fact in any case, civil or criminal, did ever ground their verdict upon an Evidence only reported before them, and which themselves heard not.

"And if this manner of proceeding shall be thought less considerable in my Person, yet I humbly desire it may be thoroughly weighed in the prudent judgment of this honourable house, the great preserver of the Laws and Liberties of the subject of England, how far it doth or may trench upon these in future consequences, if these great boundaries be laid loose and open.

"And because my infirmities are many and great, which age and grief have added to those which are naturally in me, I most humbly desire again, That my counsel may be heard for point of Law, according to the former concession of this honourable house: for I assure myself, upon that which hath been pleaded to the Lords, That no one, nor all of the things together which are charged against me, if proved, which I conceive they are not, can make me guilty of High-Treason, by any known established law of this kingdom.

"The Sum of all is this: Upon an Impeachment arising from this house, I have pleaded Not Guilty. Thereupon issue hath been joined, and Evidence given in upon oath. And now I must humbly leave it to you, your wisdom and justice, Whether it shall be thought fit, and just, and honourable, to judge me here, only upon a report, or a hearsay, and that not upon oath."

Here ended the heavy business of this day. I was exceeding faint with speaking so long; and I had great pain and soreness in my breast for almost a fortnight after: then, I thank God, it wore away. I was commanded to withdraw; and to attend the House again on Wednesday, Nov. 13, 1644, which I did. Then Mr. Browne made a Reply to my Answer: the Reply had some great mistakes in it, but else was for the most part but a more earnest affirming of what he had delivered. And I conceived I was not to answer to his Reply, but that he was to have the last speech; for so it was always carried during my Hearing in the Lords house. Therefore being dismissed, I went away; And I was no sooner gone, but the house called for the Ordinance, which was drawn up against me, and without hearing my counsel, or any more a do, voted me guilty of High-Treason. And yet, when I came that day to the house, all men, and many of the house themselves, did much magnify my Answer before given: I will forbear to set down in what language, because it was high; and as no time can be fit for vanity, so least of all was this time for me. And vain I must needs be

\* *Tucit. l. 6. Annal.*

† *Annum jam agens septuagesimum-secundum.*

thought, should I here relate what was told me from many and good hands. But it seems the clamour prevailed against me.

On Saturday Nov. 16, this Ordinance was passed the house of Commons suddenly, and with so great deliberation, as you have heard, was transmitted to the lords, and by them the debate concerning it put off to Friday Nov. 22. Then the earl of Pembroke began more fully to shew his cankered humour against me: how provoked, I protest, I know not unless by my serving him far beyond his desert. There, among other coarse language, he bestowed (as I am informed) the 'rascal' and the 'villain' upon me: and told the lords, they would put off giving their consent to the Ordinance, till the citizens would come down, and call for justice, as they did in my lord Strafford's Case. Was there not justice and wisdom in this Speech? Hereupon the business was put off to Saturday, Nov. 23, and then to Friday Nov. 29. But then upon Thursday Nov. 28, Mr. Stroud came up with a Message from the Commons, to quicken the lords in this business; And at the end of his Message he let fall, That 'they should do well to agree to the Ordinance, 'or else the multitude would come down and 'force them to it.' At this, some lords very honourably took exception; and Mr. Stroud durst not hide it, that this was any part of the Message delivered him by the house of Commons. But the matter was passed over, and Mr. Stroud not so much as checked. This, it may be, was thought seasonable by some, to hearten on the violence of the earl of Pembroke.

The business not long heard on Friday, was put off again to Monday, Dec. 2, and the house of Lords put into a Committee, to examine particulars by their Notes: the earl of Northumberland on the wool-sack during the debate which continued, more or less, some days. Where their own Notes failed, they called to Mr. Browne, clerk of their house, for his. But at last finding him very ready and quick for any thing that was charged against me, but loth to be known what Answer I gave to any point, some lords observed it. And it did after appear, that the Notes which he put to the Lords, were not the Notes which himself took, but that he had a Copy given him, (whether by Mr. Prynne or any other, I know not) and I was informed that the earl of Warwick had another Copy of the very same. This is marvellous just and honourable in that earl; and most Christianlike in Mr. Browne. It may be, he learned it out of the Notes which his father-in-law takes at sermons.

Upon Monday Dec. 16, there was, the times considered, a very full house of lords; about twenty present, and my business largely debated, and ready to come to the question. I wish with all my heart it had, while the house was so full. But the earl of Pembroke fell again into his wonted violence, and asked the lords what they stuck at? And added, 'what,

'shall we think the house of commons had no 'conscience in passing this Ordinance? Yes, 'they knew well enough what they did.' One of the wits hearing this excellent passage of the earl's, protested, if ever he lived to see a parliament in Bedlam, this prudent earl should be Speaker, if he were able to procure him the place.

In the mean time, this unhappy clamour of his put the business off again to the next day, being Tuesday, Dec. 17. Then there were but 14 lords in the house. My business was assumed, and proposed in three Questions, and I was voted guilty of the fact in all three. Namely, Guilty of endeavouring to subvert the Laws; to overthrow the Protestant Religion; and that I was an Enemy to Parliaments. Then it being put to the Judges, whether this were Treason or no; the Judges unanimously declared that nothing which was charged against me was Treason, by any known and established law of the land, with many things to and fro concerning this business.

On Tuesday, Dec. 24, Christmas-Eve, the lords had a conference with the commons about it. In which they declared, that they had diligently weighed all things that were charged against me, but could not by any one of them, or all, find me guilty of Treason: and therefore desired that the Argument made by my counsel might be answered. And if it could be made appear unto them by any Law to be Treason, they would then proceed farther, as in honour and justice they should find it. Then came Christmas-day, Dec. 25, the last Wednesday in the month, and a most solemn fast kept on it, with as solemn an Ordinance for the due observance of this fast, and against the manner of keeping of that day in former superstitious times. A fast never before heard of in Christendom.

After this Conference, Mr. Serjeant Wilde speaking freely to some friends about this business, told them, he wondered the lords should so much distrust their Judgments, as to desire a Conference about it. To see how good with agree! Surely, I believe he was of the earl of Pembroke's counsel, or the earl of his, they jumped so together. It seems in these men's opinions, the house of commons can neither err in conscience nor judgment. Howsoever, that house thought it fit the lords should be satisfied, that I was by law guilty of High-Treason: and to that end sent up a Committee, Jan. 2. 1644, to make proof of it to their lordships. At this meeting, two Judges were present, justice Reeves and judge Bacon. The managers of the business against me, were three lawyers, Mr. Browne, Serjeant Wilde, and Mr. Nicolas. Neither myself nor any of my counsel there. What this will effect upon the lords time must discover, as it doth the effects of other eclipses. And thus far I had proceeded in this sad History by Jan. 3. 1644. The rest shall follow as it comes to my knowledge.

[Next day, the Archbishop receiving the news that the Bill of Attainder had passed in the house of lords, broke off his History, and prepared himself for death. II. W.]

The Reasons of the Commons for the attainder of the Archbishop, were at a conference. Jan. 2, by Serjeant Wilde, Mr. Browne, and Mr. Nicolas, communicated to the lords; who thereupon, on the 4th of January, passed the following Ordinance of Attainder: whereby it was ordained, that he should suffer death; as in cases of High-Treason.\* And on the 6th of January it was ordered by both houses that he should suffer accordingly on Friday the 10th.

*Ordinance of Attainder.*

‘Whereas the knights, citizens, and burgesses of the house of commons, in the present parliament assembled, have in the name of themselves, and of all the commons of England, impeached William Laud, archbishop of Canterbury, for endeavouring to subvert the fundamental laws and government of the kingdom of England; and, instead thereof, to introduce an arbitrary and tyrannical government against law, and to alter and subvert God’s true religion by law established in this realm; and, instead thereof, to set up popish superstition and idolatry, and to subvert the rights of parliament, and the ancient course of parliamentary proceedings: and by false and malicious slanders, to incense his majesty against parliaments; for which the said archbishop deserves to undergo the pains and forfeitures of high-treason; which said offences have been sufficiently proved against the said archbishop upon his Impeachment: be it therefore ordered and ordained, by the lords and commons in this present parliament assembled, and by the authority of the same, That the said archbishop, for the offences aforesaid, shall stand and be adjudged attainted of high-treason, and shall suffer the pains of death; and shall incur all forfeitures both of lands and goods, as a person attainted of high-treason should or ought to do. Provided, That no judge or judges, justice or justices whatsoever, shall judge or interpret any act or thing to be treason, or hear or determine any treason, in any other manner than he or they should or ought to have done before the making of this Ordinance; and as if this Ordinance had never been had or made; saving always unto all and singular persons and bodies politic and corporate, their heirs and successors, (other than the said archbishop and his heirs, and such as claim by, from, or under him) all such right, title, and interest of, in, and to all and singular such of the lands, tenements, and hereditaments, as he, or any of them, had before the first day of this present parliament, any thing herein contained to the contrary notwithstanding.”†

But on the 7th, the lords at a Conference

acquainted the Commons with a Letter and Petition from the Archbishop, and a Pardon to him from the king, dated the 12th of April, 19 Car. of which he desired the benefit: but the same was over-ruled and rejected. His Petition was, That in case he must die, Dr. Stern, Dr. Haywood, and Dr. Martin, might be permitted to be with him before and at his death, to administer comfort to his soul; and that the manner of his Execution might be altered to beheading. To which the lords agreed, but the commons then refused both; only granted that Dr. Stern and Mr. Marshall, and Mr. Palmer, should go to him; and one or both of the latter to be constantly present, whilst Dr. Stern was with him. But the next day, upon another Petition of his, setting forth Reasons, from his being a divine, a bishop, one that had the honour to sit in the house of peers, and one of the king’s most honourable Privy-Council, &c. praying, in those regards, not to be exposed to such an ignominious Death; the commons consented to remit the rest of the Sentence, and that he should suffer death by being beheaded.

Accordingly, on the 10th of January, he was conducted from the Tower to the scaffold on Tower-hill; where being arrived, holding a Paper in his hand, he spake to the people as followeth:

“Good people; This is an uncomfortable time to preach, yet I shall begin with a text of Scripture, Heb. xii. 2. ‘Let us run with patience the Race that is set before us, looking unto Jesus, the author and finisher of our faith; who, for the joy that was set before him, endured the cross, despising the shame, and is set down at the right hand of the throne of God.’

“I have been long in my race, and how I have looked unto Jesus, the author and finisher of my faith, he best knows. I am now come to the end of my race, and here I find the cross; a death of shame: but the shame must be despised, or no coming to the right hand of God; Jesus despised the shame for me, and God forbid but I should despise the shame for him! I am going apace (as you see) towards the Red Sea, and my feet are now upon the very brink of it; an argument, I hope, that God is bringing me into the Land of Promise, for that was the way through which he led his people; but before they came to it, he instituted a Passover for them, a lamb it was, but must be eaten with sour herbs. I shall obey, and labour to digest the sour herbs as well as the lamb; and I shall remember it is the Lord’s Passover. I shall not think of the herbs, nor be angry with the hand that gathereth them, but look up only unto Him who instituted that, and governs these. For men can have no more power over me than what is given from above. I am not in love with this passage through the Red Sea, for I have the weakness and infirmity of flesh and blood plentifully in me, and I have prayed with my Saviour, ‘ut transiret Calix iste,’ that this Cup of red wine might pass from me;

\* 5 Rushworth, p. 780.

† See 3 Cobb. Parl. Hist. 324.

but if not, 'God's will, not mine, be done:' and I shall most willingly drink of this cup as deep as he pleases, and enter into this sea, yea, and pass through it in the way that he shall lead me; but I would have it remembered, good people, that when God's servants were in this boisterous sea, and Aaron amongst them, the Egyptians who persecuted them, and did in a manner drive them into the sea, were drowned in the same waters, while they were in pursuit of them.—And as for this people, they are at this day miserably misled; God of his mercy open their eyes, that they may see the right way! for at this day the blind lead the blind, and if they go on, both will certainly fall into the ditch. Though the weight of my Sentence be heavy upon me, I am as quiet within as ever I was in my life. And though I am not only the first Archbishop, but the first man that ever died by an Ordinance in parliament, yet some of my predecessors have gone this way, though not by this means.—Here is a great clamour that I would have brought in Popery: I shall answer that more fully by-and-by. In the mean time, you know what the Pharisees said against Christ himself, 'If we let him alone, all men will believe in him, et *venient Romani*, and the Romans will come' and take away our place and nation.' Here was a causeless cry against Christ, that the Romans would come: and see how just the Judgment was; they crucified Christ for fear the Romans should come, and his death was it that brought in the Romans upon them: God punishing them with that which they most feared. And I pray God this clamour of *venient Romani*, for which I have given no cause, help not to bring them in: For the Pope never had such an harvest in England since the Reformation, as he hath now upon the Sects and Divisions that are among us.—This I shall be bold to speak of the King, our gracious sovereign: He hath been much traduced also for bringing in Popery, but in my conscience (of which I shall give God a very present account), I know him to be as free from the charge as any man living, and I hold him to be as sound a Protestant (according to the Religion by law established) as any man in this kingdom, and that he will venture his life as far, and as freely, for it. And I think I do, or should, know both his affection to Religion, and his grounds for it, as fully as any man in England.—I have been accused as an Enemy to Parliaments. No! I understand them, and the benefit that comes by them, too well to be so; but I did mislike the misgovernments of some Parliaments many ways, and I have good reason for it, for *Corruptio optimi est pessima*. There is no corruption in the world so bad as that which is of the best thing within itself; for the better the thing is in nature, the worse it is corrupted. And that being the highest court, over which no other hath Jurisdiction; when it is misinformed or misgoverned, the subject is left without all remedy: But I have done. I forgive all the world, all and every of those bitter Ene-

mies which have persecuted me, and humbly desire to be forgiven of God first, and then of every man, whether I have offended him or not, if he do but conceive that I have: Lord, do thou forgive me, and I beg forgiveness of him; and so I heartily desire you to join in prayers with me.\*

Having ended his Prayers, and finding the scaffold crowded, he desired they would give him room to die, that he might have an end of the miseries he had so long endured; and coming near the block, he said, 'God's will be done! I am willing to go out of the world, none can be more willing to send me;' and perceiving some people under the Scaffold through the boards, he desired the chinks might be stopped, or the people removed, 'for he did not desire his Blood should fall upon their heads.' Sir John Clotworthy demanded of him, 'what was the most comfortable Saying

\* "His Speech and Prayer ended," says Kennet, "he gave the prayer which he read into the hands of his chaplain Mr. Stern; and seeing one Hind had been writing his Speech as it came from his mouth, he desired him 'Not to do him wrong in publishing a false or imperfect copy.' Sir John Clotworthy did rudely interrupt him with impertinent questions, which he answered with all Christian meekness. The first question was, 'What was the most comfortable saying which a dying man would have in his mouth?' He answered, 'Cupio dissolvi et esse cum Christo.' The other asked again, 'What was the fittest speech a man would use to express his confidence and assurance?' He answered, 'Such assurance is to be found within, and no Words are able to express it rightly.' The busy man demanding 'a place of Scripture, whereupon such assurance might be grounded.' He used some words to this effect, that 'it was the Word of God concerning Christ and his dying for us.'"

"Even upon the scaffold, and during the intervals of his prayers, he was harrassed and molested by sir John Clotworthy, a zealot of the reigning sect, and a great leader in the Lower House. This was the time he chose for examining the principles of the dying Primate, and trepanning him into a confession that he trusted for his salvation to the merits of good works, not to the merit of the Redeemer." Hume.—The fact seems scarcely to warrant the Historians representation.

His last Character is thus given by lord Clarendon: "He underwent his Sentence with all Christian courage and magnanimity, to the admiration of the beholders, and confusion of his enemies. Much hath been said of the person of this great prelate before, of his great endowments and natural infirmities; to which shall be added no more in this place (his memory deserving a particular celebration) than that his learning, piety, and virtue, have been attained by very few, and the greatest of his infirmities are common to all, even to the best men."

‘a dying man could have in his mouth.’ He answered, ‘*Cupio dissolvi et esse cum Christo.*’ Sir John still pressed him with several impertinent questions, to which his grace answered with abundance of meekness; and turning to the Executioner, he gave him money, and said, ‘Here, honest friend, God forgive thee, and I do, and do thy office upon me with mercy!’ Having made another short Prayer, he laid his head down upon the block, and prayed a little time to himself, after which he said aloud, ‘Lord, receive my soul;’ and this being the signal, the Executioner immediately severed his head from his body at one blow.\* He was buried after the manner of the Church of England, in the church of Allhallows, Barking; the very day the Liturgy was abolished by an Ordinance of Parliament, and the Directory set up in the room of it. A brass plate was nailed on his coffin with this inscription: ‘*In hac Cistula conduntur exuvie Gulielmi Laud, Archiepiscopi Cantuariensis, qui securi percussus immortalitatem adiit die x. Januarii, ætatis suæ 73, Archiepiscopus xii.*’

“Laud,” says Whitelocke, speaking of the Dissolution of the Parliament and continuance of the Convocation in 1640, “was more busy in temporal affairs and matters of state, than his predecessors of later times had been. Judge Whitelocke (the Author’s father) who was anciently and thoroughly acquainted with him, and knew his disposition, would say, ‘He was too full of fire, though a just and good man, and that his want of experience in state matters, and his too much zeal for the Church, and heat, if he proceeded in the way he was then in, would set this nation on fire.’” *Memoirs*, Apr. 13, 1640, p. 32.

Lord Clarendon, vol. 1, p. 89, says, “It was within one week after the king’s return from Scotland, that Abbot died at his house at Lambeth. The king took very little time to consider who should be his successor, but the very next time the bishop of London, who was longer on his way home than the king had been, came to him, his majesty entertained him very cheerfully with this compellation, ‘My Lord’s Grace of Canterbury, you are very welcome,’ and gave order the same day for the dispatch of all the necessary forms for the translation: so that within a month or there-

abouts after the death of the other archbishop, he was completely invested in that high dignity, and settled in his palace at Lambeth. This great prelate had been before in great favour with the duke of Buckingham, whose chief confident he was, and by him recommended to the king, as fittest to be trusted in the conferring all Ecclesiastical Preferments, when he was but bishop of St. David’s, or newly preferred to Bath and Wells; and from that time he entirely governed that province, without a rival: so that his promotion to Canterbury was long foreseen, and expected, nor was it attended with any increase of envy, or dislike.

“He was a man of great parts, and very exemplary virtues, allayed and decredited by some unpopular natural infirmities; the greatest of which was, besides a hasty, sharp way of expressing himself, that he believed innocency of heart, and integrity of manners, was a guard strong enough to secure any man in his voyage through this world, in what company soever he travelled, and through what ways soever he was to pass: and sure never any man was better supplied with that provision. He was born of honest parents, who were well able to provide for his education in the schools of learning, from whence they sent him to St. John’s college in Oxford, the worst endowed at that time of any in that famous university. From a scholar he became a fellow, and then the president of the college, after he had received all the graces, and degrees, the proctorship, and the doctorship, could be obtained there. He was always maligned, and persecuted by those who were of the Calvinist faction, which was then very powerful, and who, according to their usual maxim and practice, call every man they do not love, papist; and, under this senseless appellation, they created him many troubles, and vexations; and so far suppressed him, that though he was the king’s chaplain, and taken notice of for an excellent preacher, and a scholar of the most sublime parts, he had not any preferment to invite him to leave his poor college, which only gave him bread, till the vigor of his age was past: and when he was promoted by king James, it was but to a poor bishopric in Wales, which was not so good a support for a bishop, as his college was for a private scholar, though a doctor.

“Parliaments in that time were frequent, and grew very busy, and the party, under which he had suffered a continual persecution, appeared very powerful, and full of design, and they who had the courage to oppose them, begun to be taken notice of with approbation, and countenance: under this style he came to be first cherished by the duke of Buckingham, who had made some experiments of the temper, and spirit of the other people, nothing to his satisfaction. From this time he prospered at the rate of his own wishes, and being transplanted out of his cold barren diocese of St. David’s, into a warmer climate, he was left, as was said before, by that great favourite in that

\* There is in the Lambeth Collection, the following Extract given, in MS. 942, 19, from Spondanus, relating to the beheading of Laud, viz. “Spondanus in Continuatio Annalium Card. Baronii ad A. D. 1645. Mense Januarii, Gulielmus Archiepisc. Cantuariensis et Primus Angliæ, extra Romanæ et Apostolicæ [Ecclesiæ] castra, post Incarcerationem in Turri Londinensi spatio multorum mensium, capite plectitur Londini, jussu Parliamentariorum, ob defensa jura Regia et Carolo data consilia, contra Puritanos. Catholica Religio ei morienti defuit, quod dolendum.”

great trust with the king; who was sufficiently indisposed towards the persons, or the principles of Calvin's disciples.

"When he came into great authority, it may be, he retained too keen a memory of those who had so unjustly, and uncharitably persecuted him before; and I doubt, was so far transported with the same passions he had reason to complain of in his adversaries, that, as they accused him of popery, because he had some doctrinal opinions which they liked not, though they were nothing allied to popery; so he entertained too much prejudice to some persons, as if they were enemies to the discipline of the Church, because they concurred with Calvin in some doctrinal points; when they abhorred his discipline, and revered the government of the Church, and prayed for the peace of it with as much zeal, and fervency as any in the kingdom; as they made manifest in their lives, and in their sufferings with it, and for it. He had, from his first entrance into the world, without any disguise, or dissimulation, declared his own opinion of that class of men, and, as soon as it was in his power, he did all he could to hinder the growth and increase of that faction, and to restrain those who were inclined to it, from doing the mischief they desired to do. But his power at court could not enough qualify him to go through with that difficult reformation, whilst he had a superior in the church, who, having the reins in his hand, could slacken them according to his own humour and indiscretion; and was thought to be the more remiss, to irritate his choleric disposition. But when he had now the primacy in his own hand, the king being inspired with the same zeal, he thought he should be to blame, and have much to answer for, if he did not make haste to apply remedies to those diseases, which he saw would grow apace.—In September 1633, he was invested in the title, power, and jurisdiction of Archbishop of Canterbury, and entirely in possession of the revenue thereof, without a rival in Church or State; that is, no man professed to oppose his greatness; and he had never interposed or appeared in matters of state to this time.—The Archbishop had, all his life, eminently opposed Calvin's doctrine in those controversies, before the name of Arminius was taken notice of, or his opinions heard of; and thereupon for want of another name, they had called him a papist, which nobody believed him to be, and he had more manifested the contrary in his disputations, and writings, than most men had done; and it may be the other found the more severe, and rigorous usage from him, for their propagating that calumny against him. He was a man of great courage and resolution, and being most assured within himself, that he proposed no end in all his actions and designs, but what was pious and just, as sure no man had ever a heart more entire to the King, the Church, or his country, he never studied the easiest ways to those ends; he thought, it may be, that any art or industry that way would

discredit, at least make the integrity of the end suspected, let the cause be what it will. He did court persons too little; nor cared to make his designs, and purposes, appear as candid as they were, by shewing them in any other dress than their own natural beauty, though perhaps in too rough a manner; and did not consider enough what men said, or were like to say of him. If the faults and vices were to be looked into and discovered, let the persons be who they would that were guilty of them, they were sure to find no connivance of favour from him. He intended the discipline of the Church should be felt, as well as spoken of, and that it should be applied to the greatest and most splendid transgressors, as well as to the punishment of smaller offences, and meaner offenders; and thereupon called for, or cherished the discovery of those who were not careful to cover their own iniquities, thinking they were above the reach of other men, or their power, or will to chastise. Persons of honour and great quality of the court, and of the country, were every day cited into the High Commission Court, upon the same of their incontinence, or other scandal in their lives, and were there prosecuted to their shame and punishment: and as the shame, which they called an insolent triumph upon their degree and quality, and levelling them with the common people, was never forgotten, but watched for revenge; so the fines imposed there were the more questioned, and repined against, because they were assigned to the rebuilding and repairing St. Paul's church; and thought therefore to be the more severely imposed, and the less compassionately reduced and excused: which likewise made the jurisdiction and rigor of the Star-Chamber more felt, and murmured against, and sharpened many men's humours against the Bishops, before they had any ill intention towards the Church."

Abbot, his old antagonist at Oxford, and his predecessor in the Primacy, speaks much less favourably of him. Burnet, noticing Laud's Defence of himself, says, that though "written with so much care, it is a very weak performance. He intended in it to make an Appeal to the world. In most particulars he excuses himself by this, That he was but one of many who either in Council, Star-Chamber, or High Commission voted illegal things. Now, though this was true that he was but one, yet a chief minister in high favour determines so much, that they are little better than machines acted by him. On other occasions he says the things were proved by one witness only. Now, how strong soever this defence may be in law, it is of no force in an appeal to the world; for if a thing is true, it is no matter how full or how defective the proof is. The thing that gave me the strongest prejudice against him in that Book is, that after he had seen the ill effects of his violent counsels, and had been so long shut up and so long at leisure, to reflect on what had passed in the hurry of passion in the exaltation of his pro-

perity: he does not, in any one part of that great Work, acknowledge his own errors, or mix in it any wise or pious reflections on the ill usage he met with, or the unhappy steps he had made."—Of the Committee appointed to prepare the Charge against Laud "I," says the wary Whitlocke, "was one, and particularly summoned to attend that business; which I declined, and gave my reasons to Mr. Miles Corbett the chairman of that Committee, why it was not fit for me to appear in it against one to whom I had been beholden for my education. This would not satisfy Mr. Corbett, but still he pressed me, and sent for me to come and attend the Committee, but I absolutely refused it. This so displeased Mr. Corbett, that he acquainted the house with my neglect, and moved them earnestly that I might be required by their order to attend the service of that Committee, and to be one of those that should manage the Evidence against the Archbishop. This was moved when I was in the house, and upon this alarm I held it fit for me to make my apology and endeavour to be discharged from that employment, by urging that the Archbishop did me the favour to take a special care of my reading at St. John's College, in Oxford, and that it would be disingenuous and ungrateful for me to be personally instrumental to take away his life, who was so instrumental for the bettering of mine. Upon which the house discharged me from this em-

ployment." Mr. Hatsell, in his very valuable "Precedents of the Proceedings in the House of Commons," vol. 4, pp. 128, 149, 170, notices some particulars of the course of these Proceedings against Archbishop Laud, but observes concerning the most important, that "They do not fall within the compass of his work; being in times from whence no precedents ought to be drawn to justify the proceedings of either house of parliament."

To what has been already said (see the Note to p. 354) of Laud's severity, it may be added, that his appetite for revenge was so fierce, as to devour the vilest food. To gratify this appetite, he descended so low, as formally to complain to the Council, of Archibald Armstrong, the King's Fool, for a shrewd saucy speech, uttered in his official capacity, to the Archbishop. This weighty cause was heard before the King, Laud himself, the Lord Keeper, and the other great officers: and poor Archy, for his offence, had his fool's coat pulled over his head (no very dignified application, it may seem, of the ceremonies of episcopal degradation; see ante, vol. 1, p. 841, and Burn's Ecclesiastical Law, Title Degradation), and was discharged the King's service, and banished the court. See Rushworth, under date March, 1637. 1 Oldmixon, 134.

In the Archbishop's Library at Lambeth, are several curious MSS. illustrative of different particulars of Laud's History.

A brief RELATION of the Death and Sufferings of the Most Reverend and renowned Prelate the Lord Archbishop of CANTERBURY: With a more perfect Copy of his SPEECH, and other Passages on the Scaffold, than hath been hitherto imprinted. From the Collections of Sir Fran. Eyles Haskins Styles, Baronet.

[From Sommers' Tracts, 2 Coll. vol. 2, p. 287.]

JEREMIAH xxvi. 14, 15.

14. "As for me, behold I am in your hands, do with me as seemeth good and meet unto you:
15. "But know ye for certain, that if ye put me to death, ye shall surely bring innocent blood upon yourselves, and upon this city, and upon the inhabitants thereof, &c."

It is a preposterous kind of writing to begin the story of a great man's life, at the hour of his death; a most strange way of setting forth a solemn tragedy, to keep the principal actor in the tying-house, till the play be done, and then to bring him on the stage only to speak the epilogue, and receive the plaudits. Yet this must be the scope and method of these following papers. To write the whole life of the most reverend and renowned prelate the lord archbishop of Canterbury, would require more time than public expectation can endure to hear of. Those that can judge (as all wise men may) of the brightness and glories of the sun in his highest altitude by the clearness of his going down; or that can "Ortum solis in occasu querere:" [Justin. Hist. l. 11.] discern the rising of the sun (as once Stratton did) by the reflection of his beams in a western cloud; may by the glo-

rious manner of his death and sufferings, presented in these short remembrances, conjecture at the splendour of those rare endowments both of grace and nature, wherewith his former life was adorned and beautified. The ordinary and unsatisfied reader may for his farther satisfaction repair to master Pryn's Breviate of his Life and Actions, though published of purpose to defame him, and render him more odious to the common people. Concerning which, the reader may observe in brief, that all which Mr. Pryn's industrious malice hath accused him of in those collections, is, that he was a man of such eminent virtues, such an exemplary piety towards God, such an unwearied fidelity to his gracious sovereign, of such a public soul towards church and state; so fixed a constancy in friendship, and one so little biassed by his private interests; that this age affords not many equals. And it would trouble Plutarch, if he were alive, to find out a fit parallel with whom to match him. All therefore I shall do at the present time, (and it is the last public office I shall do him) is, to lay down the story of his death and sufferings, together with a view of those plots and practices which were set on foot, to pluck a few years from a weak old man, and bring him to an un-

natural calamitous end. For though that maxim in philosophy is most true and certain, that "corruptio est in instanti," that death comes to us in a moment, or "in the twinkling of an eye," as the scriptures phrase is; yet are there many previous dispositions which make way unto it; all which are comprehended in the name of Death. And in that latitude of expression do we take the word, in laying down the story of his death before you; which being writ out of an honest zeal to truth, and a sincere affection to his name and memory, shall either be approved of, or at least excused.

II. It was the practice and position of the ancient Donatists, the predecessors and progenitors of the modern Puritan, "*occidere quicumq; qui contra eos fecerit.*" [Opt. de Sahis. Donatist. l. 1.] to kill and make away whoever durst oppose their doings, or was conceived to be an hindrance to their growing faction. And by this card their followers in these kingdoms have been steered of late, imprisoning and destroying all who have stood against them. It is long since they entertained such desperate purposes against the life and person of the lord archbishop, threatening his death in scattered libels, telling him that his life was sought for, that neither God nor man could endure so vile a counsellor to live any longer. This was about the end of March, 1629, and was the prologue to those libels, full of threats and scandals, which year by year exasperated and inflamed the people, till they had made them ripe for mischief, and readily prepared to execute whatever their grand directors should suggest unto them. St. Paul did never fight more frequent and more terrible combats with the beasts of Ephesus, for the promotion of the Gospel, than he with these untractable and fiery spirits, who most seditiously opposed his religious purposes of settling unity and uniformity in this church of England. And in this state things stood till the year 1640, in which not only many factious and seditious people in and about the city of London, made an assault by night on his house at Lambeth, with an intent to murder him had they found him there: but the whole faction of the Scots declared in a Remonstrance to the English nation, that one of the chief causes which induced them to invade this realm, was to remove him from his majesty, and bring him to the punishment which he had deserved.

III. The parliament had not long continued, but he is named for an incendiary by the Scottish Commissioners; and thereupon accused of treason by the house of commons. And although no particular charge was brought against him, but only a bare promise to prepare it in convenient time; yet was he presently committed to the custody of the gentleman usher, and by him kept in durance till the end of February, (being full ten weeks:) about which time his charge was brought unto the lords, but in generals only, and longer time required for particular instances. And yet upon this Lydford law, by which they used to hang men first and indict

them afterwards, was he committed to the Tower, being followed almost all the way by the rascal multitude, who barbarously pursued him with reproach and clamours to the very gates; and there detained, contrary to all law and justice almost four years longer. This was the first great breach which was made by parliament in the liberties of the English subject; (save that their like proceeding with the earl of Strafford was a preparative unto it;) and was indeed the very gap, at which the slavery and oppression, under which this miserable nation doth now pine and languish, did break in upon them. What right could meaner persons look for, when as so great a peer was doomed to so long imprisonment, without being called unto his answer? What else hath filled so many prisons in most parts of the kingdom, with the best and wealthiest of the subjects, but the most dangerous effects and consequences of this woful precedent? which as it was the leading case unto all our pressures, so might those pressures have been remedied, had the subject made his case their own; and laboured to prevent it in convenient time. But such a miserable infatuation had befallen them generally, that "seeing" they did see, but would not perceive."

IV. But yet the malice of his enemies was not so contented. For though some of the more moderate, or rather the less violent, lords, who did not pierce into the depth of the design, gave out that they intended only to remove him from his majesty's ear, and to deprive him of his archbishopric, which resolution notwithstanding being taken up before any charge was brought against him, was as unjust, though not so cruel, as the others: yet they shewed only by this overture, that they did reckon without their hosts, and might be of the court perchance, but not of the counsel. The leading and predominant party thought of nothing less, than that he should escape with life, or go off with liberty: only perhaps they might conceive some wicked hopes, that either the tediousness of his restraint, or the indignities and affronts which day by day were offered to him, would have broke his heart, not formerly accustomed to the like oppressions. And then like Pilate in the Gospel they had called for water, "and washed" their hands before the multitude, and said, "that they were innocent of the blood of that "righteous person;" thinking that by such wretched fig-leaves, they could not only hide their wickedness, and deceive poor men; but that God also might be mocked, and his all-seeing eyes deluded, to which "all hearts lie "open, all desires are known, and from which "no secrets can be hidden." To this end, not content to immure him up within the walls of the Tower, they rob him of his menial servants, restrain him to two only of his number, and those not to have conference with any others, but in the presence of his warder: and in conclusion make him a close prisoner, not suffering him to go out of his lodging to refresh himself, but in the company of his keeper. And all this

while they vex his soul continually with scandalous and infamous papers, and set up fucious and seditious preachers to inveigh against him in the pulpit to his very face; so to expose him to the scorn both of boys and women, who many times stood up and turned towards him, to observe his countenance, to see if any alteration did appear therein. And to the same ungodly end, did they divest him of his archiepiscopal and episcopal jurisdiction, conferring it on his inferior and subordinate officers; sequester his rents under pretence of maintenance for the king's younger children (as if his majesty's revenues which they had invaded, were not sufficient for that purpose) convert his house at Lambeth into a prison, and confiscate all his coals and fuel to the use of their gaoler; deprive him of his right of patronage, and take into their own hands the disposing of all his benefices, seize upon all his goods and books which they found at Lambeth; and in conclusion rille him of his notes and papers, not only such as were of ordinary use and observation, but such as did concern him in the way of his just defence. In which they did not any thing from the first to the last, but in a proud defiance to the laws of the land, which they most impudently violated in all these particulars, and more than so, they had proceeded step by step, to this height of tyranny, a whole year almost before they had digested their general charge into particular accusations; or ever called him to his answer in due form of law.

V. But God had given him such a measure both of strength and patience, that these afflictions, though most great and irksome, did make no more impressions on him, than an arrow on a rock of adamant. For at his first commitment he besought his God (as master Prynne observes out of his *Manual of Devotions*) to "give him full patience, proportionable comfort, and contentment with whatsoever he should send;" and he was heard in that he prayed for. For notwithstanding that he had fed so long on the "bread of carefulness," and drank the "water of affliction;" yet, as the scripture telleth us of the four Hebrew children, "his countenance appeared fairer and fatter in flesh, than any of those who eat their portion of the king's meat, or drank of his wine." And he was wont to say to his private friends, that, "he thanked God he never found more sweet contentment in his greatest liberty, than in the time of that restraint." And certainly it was no wonder that it should be so, he being conscious to himself of no other crimes, which drew that fatal storm upon him, than a "religious zeal to the honour of God, the happiness of the king, and the preservation of the church in her peace and patrimony," as he professeth at his death before all the people. So that despairing of success in the way intended, his enemies fell upon another, but more desperate course, which was, to ship him for New England, and make him subject to the insolencies of Wells and Peters, two notorious schis-

matics. But this being put to the question in the house of commons, was rejected by the major part: not out of pity to his age, or consideration of his quality, nor in respect unto the laws so often violated; but to preserve him yet a while, as a stale or property, wherewith to cheat the citizens of some further sums, and to invite the Scots to a new invasion, when their occasion so required. For it was little doubted by discerning men, but that the Scots, who made their first invasion on a probable hope of sequestering the lord archbishop and the earl of Strafford from his majesty's counsels; and sped it so well in their design, that they who were recompensed already with the death of the one, would easily be tempted to a second journey, upon assurance to be glutted with the blood of the other.

VI. And this appears more plain and evident, in that about the coming on of the Scots, which was in the midst of January, 1643, they did again revive the business, which had long lain dormant; causing the articles, which they had framed in maintenance of their former accusation, to be put in print about that time, as is apparent by the test of John Browne their clerk, dated the 17th of that month. And as the Scots advanced or slackened in their marches southward, so did they either quicken or retard the work: till hearing of the great successes which they had in Yorkshire, they gave command to master Prynne, a man most mischievously industrious to disturb the public, to prosecute the charge against him, and bring him to his long expected trial; as he reports it of himself, [in his Epistle to the Breviate,] who, having rifled him of his papers, and thereby robbed him of those helps, which he had purposely reserved for his just defence; and having personal quarrels of his own to revenge upon him, was thought to be the fittest blood-bound in the whole kennel, to pursue the scent. And now there was no talk but of quick dispatch. When hatred doth accuse, and malice prosecute, and prejudice and prepossession sit upon the bench, God help the innocent. There is nothing but a miracle can preserve him then; and so it proved in the event: they called him often to the bar, both before and after, caused a strict inquisition to be made into all his actions: they winnowed him like wheat, and sifted him to the very bran, (which was you know the devil's office;) they had against him all advantages of power and malice, and witnesses at hand upon all occasions: but still they found his answers and his resolutions of so good a temper, his innocence and integrity of so bright a die, that as they knew not how to dismiss him with credit, so neither could they find a way to condemn him with justice. And though their consciences could tell them, that he had done nothing which deserved either death or bonds; yet either to reward or oblige the Scots, who would not think themselves secure while his head was on, they were resolved to bring him to a speedy end. Only they did desire, if possible, to lay the

odium of the murder upon the common people. And therefore sergeant Wild, in a speech against him, having aggravated his supposed offences to the highest pitch, concluded thus, "That he was guilty of so many and notorious treasons, so evidently destructive to the commonwealth, that he marvelled the people did not tear him in pieces as he passed between his barge, and the parliament houses." Which barbarous and bloody project when it would not take, and that though many of the rabble did desire his death, yet none would be the executioner; they then employed some of their most malicious and most active instruments, to go from door to door, and from man to man, to get hands against him; and so petition those to hasten to his condemnation, which must, forsooth, be forced to their own desires: (whereof, and of the magistrates' standing still, and suffering them to proceed without any check, he gave them a memento in his dying speech.) This being obtained, the business was pursued with such heat and violence, that by the beginning of November it was made ready for a sentence; which some conceived would have been given in the King's Bench, and that their proofs, such as they were, being fully ripened, he should have been put over to a Middlesex jury. But they were only some poor ignorants which conceived so of it. The leading members of the plot thought of no such matter; and, to say truth, it did concern them highly not to go that way: for though there was no question to be made at all, but that they could have packed a jury to have found the bill; but by a clause in the attainder of the earl of Strafford, they had bound the judges not to declare those facts for treason in the time to come, for which they had condemned and executed that heroic peer. And therefore it was done with great care and caution to proceed by ordinance, and vote him guilty first in the house of commons; in which being parties, witnesses, and judges too, they were assured to pass it as they would themselves; which was done accordingly, about the 30th of November.

VII. But yet the business was not done, for the lords stuck at it. Some of which having not extinguished all the sparks of honour, did by the light thereof discover the injustice of so foul a practice; together with the danger that might befall themselves, if once disfavoured by the grantees of that potent faction. A thing so stomached by the commons, that after some evaporations of their heat and passion, which broke out into open threats, they presently drew and sent up an Ordinance to the lords, tending to dispossess them of all power and command in their armies. But fearing this device was too weak to hold, they fall upon another and a likelier project, which was to bring the lords to sit in the commons house; where they were sure they should be inconsiderable both for power and number. And to effect the same with more speed and certainty, they had recourse to their old arts, drew down sir David

Watkins with his general muster of subscriptions, and put a petition in his hands, to be tendered by him to the houses, that is, themselves: wherein it was required amongst other things, that they would vigorously proceed unto the punishment of all delinquents; and that for the more quick dispatch of the public businesses of the state, the lords would please to vote and sit together with the commons. On such uncertain terms, such a ticklish tenure do they now hold their place and power in parliament; who so officiously complied with the house of commons, in depriving the bishops of their votes, and the church's birth-right. And this was it which helped them in that time of need. For by this, though stale and common, stratagem, did they prevail so far upon some weak spirits, that the earls of Kent, Pembroke, Salisbury, and Bullingbrook, the lords North, Gray of Wark, and Brews, (a Scotchman, but an English baron, and generally called the earl of Elgin) resolved to yield unto the current of so strong a stream; and thought they made a gaining voyage, if by delivering the lord archbishop to the people's fury, they might preserve themselves in the people's favour. And we know well, both who it was, and what end he came to, who, though he knew that the accused party was delivered him out of envy only, and that he found no evil he was guilty of; yet being wearied with the clamours and the crucifixes of the common people, and fearing that some tumult would be made about it, delivered him unto his enemies to be put to death. And for those other lords who withdrew themselves, and neither durst condemn nor protect the innocent; (though far the major part, as it is reported) it is not easy to determine, whether their conscience were more tender, their collusion grosser, or their courage weaker. All I shall say is only this, that Claudias Lynias in the Acts, had been as guilty of St Paul's death, as any of the forty who had vowed to kill him; if upon notice of the plot which was laid to murder him, he had brought him down unto the people, or not conveyed him with a strong guard to the court of Felix. The journey's end must needs be foul, which such lewd and crooked ways do conduct unto. And it is worth your observation, that the same day, the 4th of January, in which they passed this bloody ordinance, (as if therein they would cry quittance with his sacred majesty, who on the same accused the six guilty members) they passed another for establishing their new Directory; which in effect is nothing but a total abolition of the common-prayer-book, and thereby shewed unto the world, how little hopes they had of settling their new form of worship if the foundation of it were not laid in blood.

VIII. The bill being thus dispatched in the house of lords, (if still they may be called the lords, which are so over-loaded by the common people) there wanted yet the king's assent to give life to it: which they so far contemned, (they had more reason to despair of it) that

they never sought it. They had screwed up their ordinances to so high a pitch, that never act of parliament was of more authority : and having found the subjects so obedient as to yield unto them in matters which concerned them in their goods and liberties ; it was but one step more to make trial of them, whether they would submit their lives to the self same tyranny : And thus they made the first experiment in this kind, both of their own power, and the people's patience ; he being the first man, as himself noted in his speech, (which words are purposely omitted in Hind's copy of it :) that was ever put to death by ordinance in parliament ; but whether he shall be the last, further time will shew. Certain it is, that by this ordinance they have now made themselves the absolute masters of the subject's life, which they can call for at their pleasure, as no doubt they will ; and left him nothing but his fetters he can call his own. Just as it was observed by our gracious sovereign, upon occasion of the ordinance for the 20th part, that " the same power which robbed the subject of the 20th part of their estates, had by that only made a claim and entitled itself to the other 19, whensoever it should be thought expedient to hasten on the general ruin." In which his majesty hath proved but too true a prophet. And though perhaps some of the people were well pleased with this bloody ordinance, and ran with joy to see it put in execution : yet all wise men do look upon it as the last groan or gasp of our dying liberty. And let both them and those who passed it, be assured of this, that they who do so gladly sell the blood of their fellow subjects, seldom want chapmen for their own in an open market.

IX. And here, as it was once observed, that the predominant party of the United Provinces, to bring about their ends in the death of Barneveldt, subverted all those fundamental laws of the Belgic liberty for maintenance whereof they took up arms against Philip 2, so would I know which of those Fundamental Laws of the English government have not been violated by these men in their whole proceedings : for preservation of which laws, or rather under colour of such preservation, they have bewitched the people unto this rebellion : It is a fundamental law of the English government, and the first article in the Magna Charta, that the church of England shall be free, and shall have her whole rights and privileges inviolable : yet to make way unto the condemnation of this innocent man, and other the like wicked and ungodly ends, the bishops must be voted out of their place in parliament, which most of them have held far longer in their predecessors, than any of our noble families in their progenitors. And if the lords refuse to give way unto it, as at first they did, the people must come down to the house in multitudes, and cry, " No bishops, no bishops," at the parliament doors, till by the terror of their tumults they extort it from them. It is a fundamental law of the

English liberty, that no freeman shall be taken, or imprisoned without cause shewn, or be detained without being brought unto his answer in due form of law ; yet here we see a freeman imprisoned 10 whole weeks together, before any charge was brought against him ; and kept in prison 3 years more, before his general accusation was by them reduced into particulars ; and for a year almost detained close prisoner, without being brought unto his answer, as the law requires. It is a fundamental law of the English government, that no man be disseised of his freehold or liberties, but by the known laws of the land ; yet here we see a man disseised of his rents and lands, spoiled of his goods, deprived of his jurisdiction, divested of his right and patronage ; and all this done, when he was so far from being convicted by the laws of the land, that no particular charge was so much as thought of. It is a fundamental law of the English liberty, that no man shall be condemned, or put to death, but by lawful judgment of his peers, or by the law of the land, i. e. in the ordinary way of a legal trial : and sure an ordinance of both houses, without the royal assent, in no part of the law of England, nor held an ordinary way of trial for the English subject, or ever reckoned to be such in the former times. And finally, it is a fundamental law in the English government, that if any other case (than those recited in the statute of 25 Ed. 3.) which is supposed to be treason, do happen before any of his majesty's justices, the justices shall tarry without giving judgment, till the cause be shewn and declared before the king, and his parliament, whether it ought to be judged treason or not : yet here we have a new found treason, never known before, nor declared such by any of his majesty's justices, nor ever brought to be considered of by the king and his parliament, but only voted to be such by some of those few members which remain at Westminster, who were resolved to have it so for their private ends. Put all which hath been said together, and then tell me truly, if there be any difference, for I see not any, between the antient Roman slaves, and the once free-born subject of the English nation, whose life and liberty, whose goods and fortunes depend on the mere pleasure of their mighty masters.

X. But to return unto our story, the passing of the ordinance being made known unto him, he neither entertained the news with a stoical apathy, nor wailed his fate with weak and womanish lamentations, (to which extremes most men are carried in this case) but heard it with so even and so smooth a temper, as shewed he neither was afraid to live, nor ashamed to die. The time between the sentence and the execution, he spent in prayers and applications to the Lord his God ; having obtained, though not without some difficulty, a chaplain of his own, to attend upon him, and to assist him in the work of his preparation : though little preparation needed to receive that

blow, which could not but be welcome, because long expected; For so well was he studied in the art of dying, especially in the last and strictest part of his imprisonment, that by continual fasting, watching, prayers, and such like acts of Christian humiliation, his flesh was rarified into spirit, and the whole man so fitted for eternal glories, that he was more than half in heaven, before death brought his bloody, but triumphant, chariot to convey him thither. He that had so long been a Confessor, could not but think it a release of miseries to be made a Martyr; And as is recorded of Alexander the Great that the night before his best and greatest battle with Darius the Persian, he fell into so sound a sleep, that his princes hardly could awake him when the morning came: so is it certified of this great Prelate, that on the evening before his Passover, the night before the dismal combat betwixt him and death, after he had refreshed his spirits with a moderate supper, he betook himself unto his rest, and slept very soundly, till the time came in which his servants were appointed to attend his rising. A most assured sign of a soul prepared. The fatal morning being come, he first applied himself to his private prayers, and so continued, till Pennington, and other of their public officers, came to conduct him to the scaffold; which he ascended with so brave a courage, such a cheerful countenance, as if he had spouted rather to behold a triumph, than to be made a sacrifice, and came not there to die, but to be translated. And to say truth, it was no scaffold, but a throne; a throne whereon he shortly was to receive a crown, even the most glorious crown of Martyrdom. And though some rude, uncivil people reviled him as he passed along with opprobrious language, as loth to let him go to the grave in peace, it never discomposed his thoughts, nor disturbed his patience. For he had profited so well in the school of Christ, that when he was reviled he reviled not again, when he suffered he threatened not, but committed his cause to him that judgeth righteously. And as he did not fear the frowns, so neither did he covet the applause of the vulgar herd, and therefore rather chose to read what he had to speak unto the people, than to affect the ostentation either of memory or wit in that dreadful agony: whether with greater magnanimity or prudence, I can hardly say. As for the matter of his speech, besides what did concern himself and his own purgation, his great care was to clear his majesty, and the church of England from any inclination unto popery; with a persuasion of the which the authors of our present miseries had abused the people, and made them take up arms against their sovereign. A faithful servant to the last. By means whereof, as it is said of Sampson in the book of Judges, that "the men which he slew at his death were more than they which he slew in his life;" so may it be affirmed of this famous Prelate, that he gave a greater blow unto the enemies of God and the king at the hour of his death, than

he had given them in his whole life before; of which I doubt not but the king and the church will find speedy fruits. But this you will more clearly see by the speech itself, which followeth here according to the best and most perfect copies.

XI. A SPEECH of the Lord Archbishop of Canterbury, spoken at his death upon the Scaffold on the Tower-hill, January 10, 1644.

Good People;—This is an uncomfortable time to preach, yet I shall begin with a text of Scripture, Heb. xii. 2. "Let us run with patience that race which is set before us, looking unto Jesus the author and finisher of our faith, who for the joy that was set before him, endured the cross, despising the shame, and is set down at the right hand of the throne of God."

I have been long in my race, and how I have looked to Jesus the author and finisher of my faith, he best knows: I am now come to the end of my race, and here I find the cross, a death of shame; but the shame must be despised, or no coming to the right hand of God: Jesus despised the shame for me, and God forbid but I should despise the shame for him; I am going apace, as you see, towards the Red Sea, and my feet are now upon the very brink of it; an argument I hope, that God is bringing me into the land of promise, for that was the way through which he led his people. But before they came to it, he instituted a Passover for them, a Lamb it was, but it must be eaten with sour herbs, I shall obey, and labour to digest the sour herbs, as well as the Lamb. And I shall remember it is the Lord's Passover; I shall not think of the herbs, nor be angry with the hand which gathereth them; but look up only to Him who instituted that, and governs these; For men can have no more power over me than what is given them from above. I am not in love with this passage, through the Red Sea, for I have the weakness and infirmities of flesh and blood plentifully in me; And I have prayed with my Saviour, *ut transiret Calix iste*, that this cup of red wine might pass from me: But if not, God's will, not mine, be done, and I shall most willingly drink of this cup as deep as he pleases, and enter into this sea, yea and pass through it, in the way that he shall lead me.

But I would have it remembered, good people, that when God's servants were in this boisterous sea, and Aaron among them, the Egyptians which persecuted them, and did in a manner drive them into that sea, were drowned in the same waters, while they were in pursuit of them; I know my God whom I serve, is as able to deliver me from this sea of blood, as he was to deliver the three children from the furnace; and, I most humbly thank my Saviour for it, my resolution is now, as theirs was then: They would not worship the image the king had set up, nor will I the imaginations which the people are setting up; nor will I for-

sake the temple and the truth of God, to follow the bleating of Jeroboam's calf, in Dan and in Bethel. And us for this people, they are at this day miserably misled, (God of his mercy open their eyes that they may see the right way) for at this day the blind lead the blind, and if they go on, both will certainly fall into the ditch. For myself, I am, and I acknowledge it in all humility, a most grievous sinner many ways, by thought, word, and deed, and I cannot doubt, but that God hath mercy in store for me, a poor penitent, as well as for other sinners; I have now upon this and occasion, ransacked every corner of my heart, and yet, I thank God, I have not found, among the many, any one sin which deserves death by any known law of this kingdom; And yet hereby I charge nothing upon my judges; for if they proceed upon proof, by valuable witnesses, I, or any other innocent, may be justly condemned; And I thank God, though the weight of the sentence lie heavy upon me, I am as quiet within, as ever I was in my life. And though I am not only the first archbishop, but the first man that ever died by an ordinance of parliament, yet some of my predecessors have gone this way, though not by this means; for Elphegus was hurried away and lost his head by the Danes; and Simon Sudbury in the fury of Wat Tyler and his fellows; before these, St. John the Baptist had his head danced off by a lewd woman: and St. Cyprian, archbishop of Carthage, submitted his head to a persecuting sword. Many examples, great and good, and they teach me patience; for I hope my cause in heaven will look of another die, than the colour that is put upon it here. And some comfort it is to me, not only that I go the way of these great men in their several generations, but also that my charge, as foul as it is made, looks like that of the Jews against St. Paul (Acts xxv. 3.) For he was accused for the law and the temple, i. e. religion; And like that of St. Stephen (Acts vi. 14.) for breaking the ordinances which Moses gave, i. e. law and religion, the holy place and the temple (verse 13.) But you will say, do I then compare myself with the integrity of St. Paul, and St. Stephen? No, far be that from me; I only raise a comfort to myself, that these great Saints and servants of God were laid at in their times, as I am now. And it is memorable, that St. Paul, who helped on this accusation against St. Stephen: did after fall under the very same himself. Yea, but here is a great clamour, that I would have brought in Popery; I shall answer that more fully by and by; In the mean time you know what the Pharisees said against Christ himself, "If we let him alone, all men will believe in him, *et venient Romani*, and the Romans will come, and take away both our place and the nation." Here was a causeless cry against Christ that the Romans will come; And see how just the judgment of God was? they crucified Christ for fear lest the Romans should come, and his death was it which brought in the Romans upon them, God

punishing them with that which they most feared: and I pray God this clamour of *venient Romani*, of which I have given no cause, help not to bring them in; for the Pope never had such a harvest in England since the reformation, as he hath now upon the sects and divisions that are amongst us. In the mean time, by honour and dishonour, by good report and evil report, as a deceiver and yet true, am I passing through this world, 2 Cor. vi. 8.—Some particulars also I think it not amiss to speak of.

And first this I shall be bold to speak of, the king our gracious sovereign; He hath been much traduced also for bringing in of Popery; but on my conscience, of which I shall give God a very present account, I know him to be as free from this charge as any man living: and I hold him to be as sound a Protestant, according to the religion by law established, as any man in this kingdom: and that he will venture his life as far, and as freely for it: and I think I do, or should know, both his affection to religion, and his grounds for it, as fully as any man in England.

The second particular is concerning this great and populous city, (which God bless.) Here hath been of late, a fashion taken up to gather hands, and then go to the great court of this kingdom, (the parliament) and clamour for justice, as if that great and wise court, before whom the causes come, which are unknown to the many, could not, or would not do justice, but at their appointment. A way, which may endanger many an innocent man, and pluck his blood upon their own heads, and perhaps upon the city's also: And this hath been lately practised against myself: [the magistrates standing still, and suffering them openly to proceed from parish to parish without check;]\* God forgive the setters of this, with all my heart I beg it, but many well meaning people are caught by it. In St. Stephen's case, when nothing else would serve, they stirred up the people against him: and Herod went the same way, when he had killed St. James, yet he would not venture upon St. Peter, till he found how the other pleased the people. But take heed of having your hands full of blood, for there is a time, best known to himself, when God, above all other sins, makes inquisition for blood, and when that inquisition is on foot, the Psalmist tells us, That God remembers, but that is not all, he remembers and forgets not the complaint of the poor, that is, whose blood is shed by oppression, vers. 9. take heed of this, It is a fearful thing to fall into the hands of the living God, but then especially, when he is making inquisition for blood; And, with my prayers to avert it, I do heartily desire this city to remember the prophecy that is expressed, Jer. xxvi. 15.

The third particular is the poor church of England. It hath flourished and been a shelter

\* Reader, the words included [ ] are left out in the Speech published by Hinde.

to other neighbouring churches, when storms have driven upon them. But, alas, now it is in a storm itself, and God only knows whether, or how it shall get out; and, which is worse than a storm from without, it is become like an oak cleft in shivers with wedges made out of its own body, and at every cleft profaneness and irreligion is entering in, while as Prosper speaks, in his second book *De vitæ contemptu*. cap. 4. Men that introduce profaneness are cloaked over with the name *Religionis Imaginariae*, of imaginary religion; for we have lost the substance and dwell too much in opinion, and that church which all the Jesuits machinations could not ruin, is fallen into danger by her own.

The last particular, for I am not willing to be too long, is myself; I was born and baptized in the bosom of the church of England established by law; in that profession I have ever since lived, and in that I come now to die; This is no time to dissemble with God, least of all in matter of religion; and therefore I desire it may be remembered, I have always lived in the Protestant religion, established in England, and in that I come now to die. What clamours and slanders I have endured for labouring to keep a uniformity in the external service of God, according to the doctrine and discipline of this church, all men know, and I have abundantly felt.

Now at last I am accused of high treason in parliament: a crime which my soul ever abhorred; this treason was charged to consist of these two parts, An endeavour to subvert the laws of the land, and a like endeavour to overthrow the true Protestant religion established by law. Besides my answers to the several charges, I protested my innocency in both houses. It was said prisoners protestations at the bar must not be taken. I can bring no witness of my heart and the intentions thereof, therefore I must come to my protestation not at the bar, but my protestation at this hour and instant of my death; in which I hope all men will be such charitable Christians, as not to think I would die and dissemble, being instantly to give God an account for the truth of it: I do therefore here in the presence of God, and his holy angels, take it upon my death, That I never endeavoured the subversion either of law or religion; and I desire you all to remember this protest of mine for my innocency, in these, and from all treasons whatsoever. I have been accused likewise as an enemy to parliaments: No, I understand them and the benefit that comes by them too well to be so; But I did mislike the misgovernments of some parliaments many ways, and I had good reason for it; For "*corruptio optimi est pessima*," there is no corruption in the world so bad, as that which is of the best thing in itself; for the better the thing is in nature, the worse it is corrupted. And that being the highest court, over which no other have jurisdiction, when it is misinformed or misgoverned, the subject is left without all remedy. But I have done, I forgive all

the world, all and every of those bitter enemies which have persecuted me, and humbly desire to be forgiven of God first, and then of every man, whether I have offended him or not, if he do but conceive that I have, Lord do thou forgive me, and I beg forgiveness of him. And so I heartily desire you to join in prayer with me.

#### The Archbishop's PRAYER upon the Scaffold.

O Eternal God and merciful Father, look down upon me in mercy, in the riches and fullness of all thy mercies look upon me; but not till thou hast nailed my sins to the cross of Christ, not till thou hast bathed me in the blood of Christ, not till I have hid myself in the wounds of Christ: that so the punishment due unto my sins may pass over me. And since thou art pleased to try me to the uttermost, I humbly beseech thee give me now in this great instant, full patience, proportionable comfort, and a heart ready to die for thy honour, the king's happiness, and this church's preservation. And my zeal to these, far from arrogance be it spoken, is all the sin, human frailty excepted and all incidents thereto, which is yet known to me in this particular, for which I now come to suffer: I say in this particular of treason; but otherwise my sins are many and great; Lord pardon them all, and those especially, whatever they are, which have drawn down this present judgment upon me; and when thou hast given me strength to bear it, do with me as seems best in thine own eyes; and carry me through death that I may look upon it in what visage soever it shall appear to me, Amen. And that there may be a stop of this issue of blood, in this more than miserable kingdom. I shall desire that I may pray for the people too, as well as for myself, O Lord, I beseech thee; give grace of repentance to all blood-thirsty people; but if they will not repent, O Lord confound all their devices, defeat and frustrate all their designs and endeavours upon them, which are or shall be contrary to the glory of thy great name, the truth and sincerity of religion, the establishment of the king and his posterity after him in their just rights and privileges, the honour and conservation of parliaments in their just power, the preservation of this poor church in her truth, peace, and patrimony, and the settlement of this distracted and distressed people under their ancient laws, and in their native liberties. And when thou hast done all this in mere mercy for them, O Lord fill their hearts with thankfulness, and with religious dutiful obedience to thee and thy commandments all their days: So Amen, Lord Jesus, Amen, and receive my soul into thy bosom, Amen. Our Father which art, &c.

XII. The Speech and Prayers being ended, he gave the Paper which he read unto Dr. Stern, desiring him to shew it to his other chaplains, that they might know how he departed out of this world, and so prayed God to shew his mercies and blessings on them. And

noting how one Hinde had employed himself in taking a copy of his Speech as it came from his mouth; he desired him not to do him wrong in publishing a false or imperfect copy. Which as Hinde promised him to be careful of, calling for punishment from above if he should do otherwise; so hath he reasonably well performed his promise: the alterations or additions which occur therein, being perhaps the work of those who perused his papers, and were to authorise them to the public view, to fit it more unto the palate of the city faction, and make it more consistent with the credit of those guilty men; who had voted to his condemnation. This done, he next applied himself to the fatal block, as to the haven of his rest. But finding the way full of people, who had placed themselves upon the theatre to behold the tragedy, he desired he might have room to die, beseeching them to let him have an end of his miseries, which he had endured very long. All which he did with so serene and calm a mind, as if he had been rather taking order for another man's funeral, than making way unto his own. Being come near the block, he put off his doublet, and used some words to this effect: God's will be done, I am willing to go out of this world, no man can be more willing to send me out of it. And seeing through the chinks of the boards, that some people were got under the scaffold, about the very place where the block was seated, he called on the officers for some dust to stop them, or to remove the people thence, saying it was no part of his desires, that his blood should fall upon the heads of the people. Never did man put off mortality with a braver courage, nor look upon his bloody and malicious enemies with more Christian charity. And thus far he was gone in his way towards Paradise with such a primitive magnanimity, as equalled, if not exceeded the example of ancient Martyrs, when he was somewhat interrupted in his quiet passage by one sir John Clotworthy, a firebrand brought from Ireland by the earl of Warwick to increase the combustions in this kingdom. Who finding that the mockings and revilings of malicious people had no power to move him, or sharpen him into any discontent or shew of passion; would needs put in, and try why he could do with his sponge and vinegar, and stepping to him near the block, asked him, (with such a purpose as the Scribes and Pharisees used to propose questions to our Lord and Saviour) not to learn by him but to tempt him, or to expose him to some disadvantage with the standers-by, what was the comfortabest saying which a dying man could have in his mouth. To which he meekly made this answer, "*Cupio dissolvi et esse cum Christo*;" i. e. I desire to be dissolved and to be with Christ. Being asked again what was the fittest speech a man could use, to express his confidence and assurance; he answered with the same spirit of meekness that such assurance was to be found within, and that no words were able to express it

rightly. Which when it would not satisfy the troublesome and impertinent man, who aimed at something else than such satisfaction, unless he gave some word, or place of scripture, whereupon such assurance might be truly founded; he used some words to this effect, that it was the word of God concerning Christ, and his dying for us. And so without expecting any further questions, for he perceived by the manner of sir John's proceedings, that there would be no end of his interruptions, if he hearkened any longer to him, he turned towards his executioner, the gentler and discreeter man of the two, and gave him money, saying, without the least distemper or change of countenance, 'Here, honest friend, God forgive thee, and do thy office upon me with mercy,' and having given a sign when the blow should come, he knelt down upon his knees, and prayed as follows:

### XIII. The Lord Archbishop's PRAYER, as he knelt by the Block.

Lord, I am coming as fast as I can. I know I must pass through the shadow of death, before I can come to see thee. But it is but *umbra mortis*, a mere shadow of death, a little darkness upon nature; but thou by thy merits and passion, hast broke through the jaws of death. So, Lord receive my soul, and have mercy upon me, and bless this kingdom with peace and plenty, and with brotherly love and charity, that there may not be this effusion of Christian blood amongst them, for Jesus Christ's sake, if it be thy will. Then laying his head upon the block, and praying silently to himself, he said aloud, Lord receive my soul, which was the signal given to the executioner, who very dexterously did his office, and took it off at a blow: his soul ascending on the wings of angels into Abraham's bosom, and leaving his body on the scaffold, to the care of men. A spectacle so displeasing unto most of those who had desired his death with much heat and passion, that many who came with greedy eyes to see him suffer, went back with weeping eyes when they saw him dead; their consciences perhaps bearing witness to them, as you know whose did, that they had sinned in being guilty of such innocent blood. Of those, whom only curiosity, and desire of novelty brought thither to behold that unusual sight, many had not the patience to attend the issue, but went away as soon as the speech was ended; others returned much altered in the opinion which before they had of him, and bettered in their resolutions towards the king and the church, whose honour and religious purposes they saw so clearly vindicated by this glorious martyr. And for the rest, the most considerable, though perhaps the smallest part of that great assembly, as they came thither with no other intention, than to assist him with their prayers, to imbalm his body with their tears, and so lay up his dying speeches in their hearts and memories: so when they had performed those offices of Christian duty, they comforted themselves with this, that

as his life was honourable, so his death was glorious, the pains whereof were short and momentary to himself, the benefit like to be perpetual, unto them and others, who were resolved to live and die in the communion of the church of England.

XIV. But to proceed, for I have some few things to note, it was observed, that whereas other men, when they come to the block, use to look pale and wan, and ghastly, and are even dead before the blow, he on the contrary seemed more fresh and cheerful, than he had done any part of the day before: a clear and gallant spirit being like the sun, which shews greatest always at the setting. And as the scripture telleth us of St. Stephen the Proto-Martyr, that whilst he spake his last oration before the chief priests and elders of the Jews, they of the council looking stedfastly upon him, saw his face as it had been the face of an angel: so was it generally observed, not without astonishment, that all the while our Martyr prayed upon the block, the sun which had not shown itself all the day till then, did shine directly on his face, which made him look most comfortably, that I say not gloriously, but presently as soon as the blow was given, withdrew behind a cloud again and appeared no more, as we are credibly advertised by good hands from London, though it be otherwise reported in their weekly pamphlets. And if the bodies of us men be capable of any happiness in the grave, he had as great a share therein, as he could desire, or any of his friends expect; his body being accompanied to the earth with great multitudes of people, whom love, or curiosity, or remorse of conscience had drawn together, purposely to perform that office, and decently interred in the church of All-hallows Barking, a church of his

own patronage and jurisdiction, according to the rites and ceremonies of the church of England. In which it may be noted, as a thing remarkable, that being whilst he lived the greatest champion of the common-prayer-book, here by law established, he had the honour being dead, to be buried in the form therein prescribed, after it had been long disused, and reprobated in most churches of London. Nor need posterity take care to provide his monument. He built one for himself whilst he was alive: it being well observed by sir Edward Dering, [In his book of speeches] one of his most malicious enemies, and he who threw the first stone at him, in the beginning of this parliament, that St. Paul's church will be his perpetual monument, and his own book, against the jesuit, his lasting epitaph.

XV. Thus died this most reverend, renowned, and religious prelate: when he had lived 71 years, 13 weeks, 4 days; if at the least he may be properly said to die, the great example of whose virtue shall continue always, not only in the minds of men, but in the annals of succeeding ages, with renown and fame. But how he lived, what excellent parts he was composed of, and how industriously he employed those parts, for the advancement of God's honour, his sovereign's power and safety, and the church's peace, will be a work becoming a more able pen; unto whose care and diligence I commend the same. And so I leave him to that comfort which the Psalmist gives him, and it is the greatest comfort that can befall those men, who have been tortured on the rack of malicious tongues; viz. The righteous shall be had in everlasting remembrance, and shall not be afraid of any evil report. 1's. cxii. v. 6. 7.

172. Proceedings against Mr. TOMPKINS, Mr. WALLER, Mr. CHALLONER, and Others, before a Council of War, for a Plot against the Parliament: 19 CHARLES I. A. D. 1643. [5 Rushw. Coll. 322. 2 Clarendon's Hist. 247. 3 Cobb. Parl. Hist. 140.]

AT this time [Tuesday the 30th of May 1643.] happened the discovery of a notable Design, carried on by Mr. Tompkins, Mr. Waller, Mr. Challoner, and Others; The first notice whereof was given by one Mr. Roe, servant to Mr. Tompkins, who having over-heard some of their consultations, imparted the same to a member of the house of commons; whereupon a committee was appointed to inquire into the same; viz. Mr. Pym, sir Henry Vane, jun., Mr. Solicitor St. Johns, and Mr. Glyn, (not long before chosen Recorder of London) who having several days and nights traced the same, and divers of the persons concerned being secured, the house of commons desired a Conference with the lords, where Mr. Pym communicated to them the substance of the Design, and soon after set the same forth in print, with an Order that the

same should be read in all churches and chapels in London and Westminster, and the suburbs thereof, as follows.

I. That the Conspiracy was formed of a mixture and conjunction of persons of several qualities, some whereof were of both Houses of Parliament, others of the City, and others belonging to the court, who in their respective places and employments, were to form and perfect the work, raised out of the ashes of the late Petition of London for peace.

II. The chief actors were Mr. Waller, a member of the house of commons, who pretended, and gave out to the rest, that many others of that house, and of the lords, were privy to and concerned therein: Mr. Tompkins, a gentleman living in Holborn, brother-in-law to the said Mr. Waller, and a servant to the

queen, as being secretary to the commissioners for her majesty's revenue; Mr. Challoner, an eminent citizen; one Mr. Blinkard, Mr. Alexander Hampden, who brought the last message from the king, Mr. Hassel one of his majesty's messengers, &c.

III. The method was for several persons in the City to dispose of themselves into a committee, to hold intelligence with both Armies, the Court, and the Parliament. To take a general survey of the affections of all the inhabitants within the Weekly Bills of Mortality, which was to be done under these 3 ranks; Right Men, (or of the king's party;) Averse Men, (or the well-affected to the Parliament;) and Moderate Men, (or neutrals;) To consider of Arms, Ammunition, and all Provisions of War: To appoint out of themselves select persons to treat with Mr. Waller, and Mr. Tompkins, in relation to the City, Court and Parliament: as also with sir Nicholas Crispe, sir George Binion, captain Roydon, and others then at Oxford.

IV. Mr. Waller's part was to engage a considerable part of the Lords and Commons, and to be a means of conveying Counsels, Resolutions, and intelligence between them and the said City-Committee. Mr. Tompkins was not only an assistant to Mr. Waller therein, but an instrument to convey, by Hassel, and others, their proceedings to the court, principally to the lord Falkland, and to receive thence directions, powers, and commands.

V. For preventing discovery, protestations of secrecy were taken, as they were Christians, not to disclose it; and no man in the city was to endeavour the engaging above two, whereby no one man could impeach many.

VI. From the court, Mr. Heron, and Mr. Alexander Hampden, and others employed upon Messages from the king to the parliament, were to convey directions, encouragements, and advice to those in London; and authority was to be given under the great seal, and warrants under the king's hand for settling a council of war, naming of generals, and other officers, execution of martial law, raising of money, and providing arms; and to facilitate the whole, part of the king's forces to be in readiness to assist the party here, as there should be occasion.

VII. The particulars of the Design itself, were, To seize the king's children, To secure several Members of Parliament, particularly the lord Say, the lord Wharton, Mr. Pym, sir Philip Stapleton, colonel Hampden, and colonel Strode; As also the lord mayor, and committee of the militia, under pretence of bringing them to a legal trial; To seize upon the outworks, forts, magazines, gates, and other places of importance in the city, and the Tower, and let in the king's forces; and in the mean time to resist and obstruct all payments imposed by authority of the two houses for support of their armies.

VIII. For their authority they had the following Commission brought up by the lady Au-

bigny, (who was now taken into custody) the said commission being found hid under ground in Mr. Tompkins's cellar.

Charles by the Grace of God, king of England, Scotland, France, and Ireland, defender of the Faith, &c. To our trusty and well-beloved sir Nicholas Crispe, sir George Stroude, knights, sir Tho. Gardiner knight, recorder of London, sir George Binion knight, Richard Edes, and Marmaduke Roydon esquires, Tho. Broom esq. Peter Paggon, Charles Jennings, sir Edw. Charlton, Robert Abbot, Andrew King, William White, Stephen Bolton, Robert Alden, Edmund Foster, Tho. Blinkhorn of London, gentlemen; and to all such other person and persons as according to the true intent and purport of these presents, shall be nominated and appointed to be generals, colonels, sergeant-majors, or other officers, or of our council of War, greeting. Whereas in our cities of London and Westminster, and suburbs thereof, our borough of Southwark, and county of Middlesex, there are raised and continued great numbers of military forces, both horse and foot, who under the command of Robert earl of Essex, as their general, and under the conduct of divers others, pretending to derive their authority from the two houses of parliament, have traiterously levied war, and rebelled against us, their natural liege lord, and many of our subjects have been seduced by false informations, by the practice of a few, who have been the contrivers of these mischievous plots, and have joined with them either in person, or by aiding of them with men, money, horses, or other things; and many of our good and loyal subjects, overawed by the power of the rebels, have been enforced to contribute to them for the maintenance of this unnatural war, and others refusing, have been plundered and robbed of their estates, and some committed to several prisons, and others barbarously used, contrary to the liberty of free-born men, the laws of the land, and contrary to all humanity; of which injuries and calamities falling upon our good subjects, we are very sensible, and desirous to give relief to our good subjects by all the best means we can; and to resist the violence and insolence of the rebels and their adherents, We having no other end therein, but to preserve the true Protestant religion in the integrity and purity thereof; to maintain the laws of the land, and the liberty of the persons, and the property of the estates of our subjects, and the just privileges of parliament, have thought fit for our better service to settle a council of war, in or about our city of London, who may take those things into their sad considerations, which may conduce best to this end, and to have such commanders and officers settled in the places aforesaid, which may both raise, and govern, and lead such forces as may be raised there.—Know ye therefore, That we, reposing special trust and confidence in your fidelities, industries,

‘and good discretions, have made choice of, nominated, and appointed you to be our council of war for the said cities of London and Westminster and suburbs thereof, our said county of Middlesex and borough of Southwark; and do hereby give and grant authority to you, or any four of you, to make choice of such other able and discreet persons as you shall think fit to nominate under the hands and seals of any four of you, which with yourselves shall make up in all the number of 21, and no more. And we do give and grant to you, or any four of you, power and authority, at such times and in such places as you shall think convenient, to assemble and meet together, and there to consult, advise, and resolve of all such things; and of such ways and means as you or any four of you shall think fittest, for the raising of forces, both of horse and foot, either of the inhabitants of the said cities, county and borough, or any adjacent counties, or other places, who will voluntarily associate themselves to that purpose; and these forces to arm, muster, conduct, order, lead and govern, in the places aforesaid, or in any the counties adjacent, or elsewhere, in such manner as you yourselves, or such other able and fit persons as you or any four of you shall appoint, according to these presents, shall think fit.

‘And the better to effect this our service, We do further give and grant to you or any four of you, power and authority, under your hands and seals, to make choice of and appoint such a fit person as you shall think meet, to be captain-general of all these forces thus to be raised, and such other person as you or any four of you shall in like manner make choice of and appoint to be colonel, lieutenant-colonel, and serjeant-majors, over the said forces, in such manner, and in such places as you shall so appoint; who by virtue thereof, and by virtue of these presents, shall have power and authority to do, execute and perform all such things which to these several offices and employments, according to law-martial, do belong. And we do hereby promise and grant, That with all convenient speed, after we shall have notice from you or any four of you under your hands and seals, of your nomination of any person or persons to those several places, we shall grant and confirm unto them and every of them respectively those several places to which you have nominated them, as aforesaid, under our great seal of England, or otherwise as shall be reasonably devised and required of us.

‘And we do further by these presents give and grant unto you full power and authority, by all such good ways as you or any four of you, under your hands shall agree upon, to raise money for the cloathing, arming, furnishing and paying of all such soldiers as shall be thus raised, and for the providing of all ammunition and other necessaries for the war;

‘all which money, upon a just account, we do, for us, our heirs and successors, promise, grant, and agree, well and truly to repay, so soon as we shall be enabled thereunto, and in the mean time to secure the same to those who for our service, and by your mediation and industry, shall lend or disburse the same. And we do further by these presents grant, That such generals, colonels, lieutenant-colonels, and other officers so by you nominated as aforesaid, shall have full power and authority, by virtue of these presents, to lead and order the soldiers severally under their charges, and with them to fight against our enemies and rebels, and them to slay and destroy, or them to save, according to the law-martial, or course of war: for the doing of all which, this shall be to you, them, and every of them, a sufficient warrant. Willing and commanding all such officers and soldiers, which by virtue hereof you shall retain, to obey readily, and receive and accomplish your directions, commands, and summons in all things hereto appertaining or necessary to be done: as also all mayors, sheriffs, justices of peace, commissioners of array, and all other our officers and loving subjects, to be aiding and assisting, both to you, and to all such officers and other persons whom you shall appoint under any four of your hands and seals, for the furthering and advancement of this our especial service: for which, this shall be to you, to them, and every of them, a sufficient warrant. In witness whereof we have caused these our letters to be made patent, witness ourself, at Oxford the 16th day of March, in the 18th year of our reign.’

IX. In pursuance of this Commission, they had often consulted of a General, and treated with sir Hugh Pollard, prisoner in the Compter, (once a member of the house of commons, but expelled, being accused of having an hand in the Design to bring up the Northern Army against the Parliament,) about it. And a Declaration was ready drawn, setting forth the cause of their taking up of arms to be in pursuance of their late Protestation to maintain the true reformed Protestant religion against all Papists and Sectaries, to oppose illegal assessments, &c. Which was to be distributed to their friends, and on the night of their rising set upon the posts around about London. Concerning which time of their rising, they had also consulted, (of which precise notice was to be sent to Oxford, as to the day and hour,) and some moved to have it done on Wednesday the last of May, (being the Fast day, and the very next day after the first intimation was given towards a discovery,) but it had been put off, and not fully concluded, it being said ‘it should be left to the lords to determine;’ whom Waller pretended should side with them. Mr. Haesel lay close at Beaconsfield, and had word sent, ‘The great Ship was come into the Downs,’ by which he was to understand that the Design was near ripe: and he acquainted the lord

Falkland at Oxford therewith, and received Answer, That they should hasten it with all speed. And when they were ready, 3,000 of the king's forces were to advance from Oxford within 15 miles of London, to be ready upon notice to fall into the works and assist. And white ribbons or tape was agreed to be worn by all concerned in this action to distinguish them, &c.

The Parliament, upon this Discovery, formed an Oath or Vow, to be taken by the Members of both houses, and by their Army; and appointed a General Thanksgiving to be kept throughout the kingdom; at which time a printed Narrative of this Design was to be read, and the said Oath or Covenant to be tendered to all persons; (but no penalty set on the refusers) the Oath being as follows :

'I, A. B. in humility and reverence of the  
'divine majesty, declare my hearty sorrow for  
'my own sins and the sins of this nation,  
'which have deserved the calamities and judgments  
'that now lie upon it : and my true intention  
'is by God's grace, to endeavour the  
'amendment of my own ways. And I do  
'further in the presence of Almighty God, declare,  
'vow, and covenant, that in order to the  
'security and preservation of the true reformed  
'Protestant religion and liberty of the subject,  
'I will not consent to the laying down of arms,  
'so long as the Papists, now in open war  
'against the parliament, shall by force of arms  
'be protected from the justice thereof : and  
'that I do abhor and detest the wicked and  
'treacherous design lately discovered; and  
'that I never gave, nor will give my assent to  
'the execution thereof, but will according to  
'my power and vocation oppose and resist the  
'same, and all other of the like nature. And  
'in case any other like design shall hereafter  
'come to my knowledge, I will make such  
'timely discovery as I shall conceive may best  
'conduce to the preventing thereof. And  
'whereas I do in my conscience believe, that  
'the forces raised by the two houses of parliament  
'are raised and continued for their just  
'defence, and for the defence of the true protestant  
'religion and liberty of the subject, against the  
'forces raised by the king; that I will, according  
'to my power and vocation, assist the forces raised  
'and continued by both houses of parliament, against  
'the forces raised by the king, without their consent;  
'and will likewise assist all other persons that  
'shall take this oath, in what they shall do in  
'pursuance thereof; and will not directly or  
'indirectly adhere unto, nor shall willingly assist  
'the forces raised by the king, without the consent  
'of both houses of parliament. And this vow and  
'covenant I make in the presence of Almighty God,  
'the searcher of all hearts, with a true intention  
'to perform the same, as I shall answer at the great  
'day when the secrets of all hearts shall be disclosed.'

The Parliament sent to general Essex, desiring him to appoint a Council of War, for

trying of Mr. Tompkins, &c. which was done; and on Friday the 30th of June a Council of War sat at Guildhall, consisting of 22 colonels of the city, and of the Lord General's Army, the earl of Manchester being President; before whom Mr. Tompkins, Mr. Challoner, Mr. Blinkhorn, Mr. Abbot, Mr. White, and Mr. Hampden, were severally brought to the bar, and their Examinations and Confessions produced by the Advocate-General, and read; and upon Monday July 3, Tompkins and Challoner received Sentence of death; and the next day, Blinkhorn and Abbot: but Hampden being fallen sick, his Trial was put off; and as for Mr. White, the Court agreed not in their Judgment.

On Wednesday July 5, Mr. Tompkins was executed on a gibbet, at the end of Fetter-lane in Holborn (near his own house.) And the same day Mr. Challoner suffered in like manner over against the Royal-Exchange. Their Speeches (as they were printed in those times) were as follow :

MR. TOMPKINS's Speech upon the Ladder immediately before his Execution.

"Gentlemen; I do humbly acknowledge in the sight of Almighty God (to whom, and to angels, and to this great assembly of people, I am now a spectacle) that my sins have deserved of him this untimely and shameful death; and I humbly submit to it: and seeing all our times are in his hand, and that a sparrows fall not to the ground, but with his providence, much more man, that bears his image. I am no Atheist, but do acknowledge God's great protection to me, and his goodness and mercy, in that he hath, during all this trouble I have undergone, preserved my heart, and kept it from sin, and from thoughts of distraction: I acknowledge his great mercy. I am no Papist; I must tell you why I shall speak a little of this, because I have been desired by a good and ancient friend of mine to declare myself in this point: and therefore I shall say somewhat to you of this. I say, I was never Papist, nor Popishly inclined; and for some relations I have had to some that way, I did never make any shew of the least inclination to Popism. I have sometimes had conference and disputes with some Jesuits, (in foreign parts chiefly) I thank God, my principles of religion were so grounded, they could never shake me: I have been called by some of them an heretic in grain. But this is true, (which might make that worthy friend of mine put me in mind to clear myself in this point) in regard of some relations, and in regard I received very civil usage from those of that religion in foreign parts, where that religion is professed; I returned the like civility to them here, as I had occasion, and especially to those whom any civil affair brought into my conversation. And truly if I were to live, I should do the same thing, having no calling to the contrary: if I were an officer, it were something. I do forgive all the world, as I desire all the world,

should forgive me. Touching the business for which I suffer, I do acknowledge, that affection to a brother-in-law, and affection and gratitude to the king, whose bread I have eaten now above 22 years: (I have been a servant to him 20 years, I have been a servant to him when he was prince, and ever since; it will be 23 years in August next) I confess, these two motives drew me into this foolish business. I have often since declared to good friends, that I was glad it was discovered; because it might have occasioned very ill consequences; and truly I have repented having any hand in it.

"Gentlemen, I thank God, God hath given me so good a heart, and such presence of mind, as I was confident he would either take me out of this danger, or that he would be present with me, to assist me in bearing this trouble. I do acknowledge this as a great mercy, either to take me away from the days of sin, or to take me away from the evils of the time to come, which God avert; or to take me away from the infirmities of age, now approaching upon me. I know not what more to say."

Then turning to the Executioner, he said,

"Honest friend, I forgive you, as the executioner of justice; I forgive you, and I do recommend myself into the hands of God Almighty; and one thing pray give me leave to say, I hope to be saved by faith in Jesus Christ."

Lieutenant Colonel Washborn asked Mr. Tompkins, "Do you acknowledge this your suffering to be just?" Mr. Tompkins answered, "I have said it already, pray do not trouble me." Then Lieutenant-colonel Washborn said to him, "Whereas you have had a hand in this you suffer for, if you know any other Plot that is prejudicial to the Parliament or State, pray reveal it." Mr. Tompkins answered, "Pray trouble me not; I have done my duty."

Then the Executioner performed his office: and it was to be noted, that in all this time, from the beginning to the end, he never so much as altered his countenance, nor by his outward appearance seemed in the least abashed with the apprehension of death.

#### Mr. CHALLONER's dying Words:

"Gentlemen; It hath pleased God to bring me to this place; God hath now returned my prayer upon me: My prayer was, That if this design might not be honourable to him, that it might be known: God hath heard me, and it is discovered, the very same thing hath satisfied me, that I was in an error, and that I am confident I was in a great deal of fault: and, I confess, I do now die justly; and I pray God, that I may now glorify the Lord. I shall only thus much declare to the world, that may take off the aspersion that was laid upon my partner and my wife, which neither of them did know of this design. I have declared my conscience freely to God and the world, in every particular that concerns the business. Thus much I shall say for my own particular; there were three things

laid to my charge, which there was some mistake in, concerning the King's Letter, whereas it was thought to be another way: I thank God it was not that way. Then concerning the Seal, I had no hand in the procuring of it; nor knew not of it till the Friday. There is another thing, that is concerning the seizing of the magazines, which I had no hand in neither. But I die justly, and deserve this punishment.

"But now to you all that are here, Let my example be to you, that you never take yourself to any thing but what you have warrant for from the Lord: I had no warrant I vow to God, that hath now satisfied me: the Lord, I hope, will forgive me. I have heartily repented; and I beseech you all to take this as a warning. And whereas there is now a great deal of distraction and division in the city; and that we now make difference between God's ministers and God's ministers; despise no means: I acknowledge my fault: I did make some difference, and I now acknowledge it, and desire the Lord to forgive me: I have received more comfort from such men than ever I had before. I shall not now have much to say: but I desire heartily the whole world would forgive me. I do beg of my God, and of my Christ, whom I have not honoured so much as I should have done, that he would have mercy upon me. And now to you all I speak, I do now as freely forgive you, as I trust my Saviour Jesus Christ hath forgiven me. And so, Lord Jesus, into thy hands I commend my spirit, for thou hast redeemed me. O Lord God, and so the Lord take me, the Lord receive me."

Then his father tendered him the king's Pardon, saying; Here is the king's gracious Pardon.' To which Mr. Challoner answered, 'Sir, I beseech you, trouble me not with it. Pray speak to my friends to take care of my corps, and carry me home.' Then Mr. Peters,\* said to him, 'You are now before the Lord of Heaven; if you have any thing about the Lords you spoke of so often last night, I beseech you speak your conscience.' Mr. Challoner answering, said; 'Gentlemen, This is the happiest day that ever I had. I shall now, gentlemen, declare a little more of the occasion of this, as I am desired by Mr. Peters, to give him and the world satisfaction in. It came from Mr. Waller under this notion, 'That if we could make a moderate party here in London, to stand betwixt, and in the gap, to unite the king and the parliament, it would be a very acceptable work; for now the three kingdoms lay a bleeding, and unless that were done, there was no hopes to unite them.' Withal I made this reply: 'Sir, If I could assure you of three parts of London, none of them should stir unless we had the countenance of the Lords and Commons.' To this he replied, 'You shall have to countenance this business, the whole House

\* "Mr. Challoner," says Heath, "at his execution spake little, being not suffered to have any of the sober pious clergy with him, but haunted by that stage divine Hugh Peters."

of Lords, except three or four, and divers of the House of Commons. We were promised we should speak with these lords; and, in truth, except we had spoken with these lords, nothing could have been done: for Mr. Abbot, Mr. Blinkborn, Mr. Luntloe, Mr. King, and myself, agreed, That we would not stir till these Lords had declared themselves, and would be engaged. And now, Gentlemen, I have another thing to declare, which shall be in the behalf of those that are condemned. As Mr. Waller was the mouth from the Lords, as he did declare, so I was the unhappy instrument from Mr. Waller to the rest: The Sentence is now past, I desire, if it might be, That it might be moved to the house, That no more might suffer in this cause. This is all I have to say, and desire your hearty prayers to God for me."

Then one Mr. Smart said to him, "Mr. Challoner, if you were to live longer, would you ever have done the like again?"

Mr. Challoner answered, "I am thus far confident, That if it had pleased God to lend me life, I think I should have ran another course, and I am confident of it. I hope this is the happiest day I ever saw; for I hope God is reconciled to me in my Saviour Jesus Christ, that hath given me repentance, and I am confident he will return my prayer for me." Then, at his request, Mr. Peters prayed with him; which being ended, he said these words; "Gentlemen, I do from my heart forgive you, and all the world, desiring you and all the world to forgive me also; and so I commend my soul into the hands of my God."

Mr. WALLER's Speech in the House of Commons, on Tuesday the 4th of July, 1643.

Mr. Waller being a member of the House of Commons, could not be tried by the Council of War, whilst he continued so; and therefore, on Tuesday, July the 4th, was brought to the bar, and had leave given him by the Speaker, to say what he could for himself, before they proceeded to expel him the house; whereupon, he spake as follows:

"Mr. Speaker; I acknowledge it a great mercy of God, and a great favour from you, that I am once more suffered to behold this honourable assembly; I mean, not to make use of it to say any thing in my own defence, by justification, or denial of what I have done: I have already confessed enough to make me appear worthy, not only to be put out of this house, but out of the world too. All my humble request to you is, that, if I seem to you as unworthy to live, as I do to myself, I may have the honour to receive my death from your own hands, and not be exposed to a trial by the council of war: whatever you shall think me worthy to suffer in a parliamentary way, is not like to find stop any where else.

"This, sir, I hope you will be pleased for your own sakes to grant me, who am already so miserable, that nothing can be added to my calamity, but to be made the occasion of creating a precedent to your own disadvantage; be-

sides the right I may have to this, consider, I beseech you, that the eyes of the world are upon you; you govern in chief, and if you should expose your own members to the punishment of others, it will be thought that you either want power or leisure to chastise them yourselves; nor let any man despise the ill consequences of such a precedent as this will be; because he seeth not presently the inconveniencies which may ensue: you have many armies on foot, and it is uncertain how long you may have occasion to use them. Soldiers and commanders, though I know well they of the parliament's army excel no less in modesty than they do in courage, are generally of a nature ready to pretend to the utmost power of this kind, which they conceive to be due to them, and may be too apt, upon any occasion of discontent, to make use of such a precedent as this. In this very parliament you have not been without some taste of the experience hereof: it is now somewhat more than two years since you had an army in the north, paid and directed by yourselves; and yet you may be pleased to remember, there was a considerable number of officers in that army, which joined in a petition or remonstrance to this house, taking notice of what some of the members had said, as they supposed to their disadvantage, and did little less than require them of you; it is true, there had been some tampering with them; but what has happened at one time may wisely be thought possible to fall out again at another.

"Sir, I presume but to point you out the danger, if it be not just, I know you will not do me the wrong to expose me to this trial; if it be just, your army may another time require the same justice of you, in their own behalf, against some other member, who, perhaps, you would be less willing to part with. Necessity has of late forced you into untrodden paths; and in such a case as this, where you have no precedent of your own, you may not do amiss to look abroad upon others, states and senates, which exercise the supreme power, as you now do here.

"I dare confidently say, you shall find none, either ancient or modern, which ever exposed any of their own order to be tried for his life, by the officers of their armies abroad, for what he did while he resided among them in the senate. Among the Romans the practice was so contrary, that some inferior officers in their army, far from the city, having been sentenced by their general or commander in chief, as deserving death by their discipline of war, have nevertheless, because they were senators, appealed thither, and the cause has received a new hearing in the senate. Not to use more words to persuade you to take heed that you wound not yourself through my sides, in violating the privileges belonging to your own persons: I shall humbly desire you to consider likewise the nature of my offence, not but that I should be much ashamed to say any thing in diminution thereof: God knows it is

horrid enough for the evil it might have occasioned, but if you look near it, it may perhaps appear to be rather a civil than a martial crime, and so to have title to a trial at the common law of the land; there may justly be some difference put between me and others in this business.

"I have had nothing to do with the other army, or any intention to begin the offer of violence to any body. It was only a civil pretence to that which I then foolishly conceived to be the right of the subject. I humbly refer it to your considerations, and to your consciences. I know you will take care not to shed the blood of war in peace, that blood by the law of war which hath a right to be tried by the law of peace. For so much as concerns myself, and my part in this business, (if I were worthy to have any thing spoken or patiently heard in my behalf) this might truly be said, that I made not this business, but found it; it was in other mens hands long before it was brought to me, and when it came, I extended it not, but restrained it. For the propositions of letting in part of the king's army, or offering violence to the members of this house, I ever disallowed, and utterly rejected them.

"What it was that moved me to entertain discourse of this business, so far as I did, I will tell you ingenuously, and that rather as a warning for others, than that it makes any thing for myself: it was only impatience of the inconveniences of the present war, looking on things with a carnal eye, and not minding that which chiefly, if not only ought to have been considered, the inestimable value of the cause you have in hand, the cause of God and of Religion, and the necessities you are forced on for the maintenance of the same; as a just punishment for this neglect, it pleased God to desert and suffer me with a fatal blindness, to be led on, and engaged in such counsels as were wholly disproportioned to the rest of my life; these, sir, my own conscience tells me, were the cause of my failing, and not malice, or any ill habit of mind, or disposition toward the common-wealth, or to the parliament: for from whence should I have it? If you look on my birth, you will not find it in my blood: I am of a stock which hath born you better fruit: If you look on my education, it hath been almost from my childhood in this house, and among the best sort of men; and for the whole practice of my life to this time, if another were to speak for me, he might reasonably say, that neither my actions out of parliament, nor my expressions in it, have enquired of distrust or malice to the liberties of the people or privileges of parliament.

"Thus, sir, I have set before your eyes, both my person and my case, wherein I shall make no such defence by denying or extenuating any thing: I have done, as ordinary delinquents do, my address to you, and all my plea shall only be such as children use to their parents. I have offended, I confess it; I never

did any thing like it before: it is a passage unsuitable to the whole course of my life beside; and for the time to come, as God that can bring light out of darkness, and hath made this business, in the event, useful to you; so also hath he to me: You have by it, made an happy discovery of your enemies, and God of myself, and the evil principles I walk by; so that if you look either on what I have been heretofore, or what I now am, and by God's grace assisting me, shall always continue to be; you may perhaps think me fit to be an example of your compassion and clemency.

"Sir, I shall no sooner leave you, but my life will depend on your breath, and not that alone, but the subsistence of some that are more innocent. I might therefore shew you my children, whom the rigour of your justice would make complete orphans, being already motherless. I might shew you a family, wherein there are some unworthy to have their share in that mark of infamy which now threatens us: But something there is, which, if I could shew you, would move you more than all this; it is my heart, which abhors what I have done more, and is more severe to itself, than the severest judge can be. A heart, Mr. Speaker, so awakened by this affliction, and so entirely devoted to the cause you maintain, that I earnestly desire of God to incline you so to dispose of me, whether for life or for death, as may most conduce to the advancement thereof.

"Sir, not to trouble you any longer, if I die, I shall die praying for you; if I live, I shall live serving you, and render you back the use and employment of all those days you shall add to my life."

After this, having withdrawn himself, he was called in again, and, being by the Speaker required thereto, gave them an exact Account how he came first to the knowledge of this business, &c. However, they proceeded to expel him the house; and so being left to the Council of War, he was condemned to die, but had a reprieve from General Essex; and after about a year's imprisonment, paying a fine of 10,000*l.* was discharged, and travelled into France. The earl of Portland, and the lord Conway were taxed, as being privy to this Design, and for some time in custody; but it not being clearly proved, they were soon after discharged.

The following is lord Clarendon's Account of this business.

"There fell out now an accident at London, which gave great advantage to them in the fierce prosecution of the war, a discovery of a Plot, which produced a public thanksgiving to God for their deliverance, a wonderful animosity against the king, and a covenant, and union among themselves, and throughout the city a prejudice to all moderate men, who promoted an accommodation, and a brand upon all overtures of peace as stratagems upon the city, and the parliament. Of this plot, there being never such a formed relation made by

those who made great use of it, that men can collect what the design was, or that it was laid with any probable circumstances, by which a success might be expected, I shall briefly, and faithfully set down all that I know, have heard, or can reasonably conjecture to be in it; and it was thought by many, and averred by others who I believe did not think so, that I knew as much of it as most men.

"There was of the house of commons one Mr. Waller, a gentleman of a very good fortune and estate, and of admirable parts, and faculties of wit and eloquence, and of an intimate conversation, and familiarity with those who had that reputation. He had, from the beginning of the parliament, been looked upon by all men, as a person of very entire affections to the king's service, and to the established government of church and state; and by having no manner of relation to the court, had the more credit and interest to promote the rights of it. When the ruptures grew so great between the king and the two houses, that very many of the members withdrew from those councils, he, among the rest, with equal dislike absented himself: but at the time the standard was set up, having intimacy and friendship with some persons now of nearness about the king, with the king's approbation, he returned again to London; where he spoke, upon all occasions, with great sharpness, and freedom; which (now there were so few there that used it, and there was no danger of being over voted) was not restrained; and therefore used as an argument against those, who were gone upon pretence "that they were not suffered to declare their opinion freely in the house;" which could not be believed, when all men knew, what liberty Mr. Waller took, and spoke every day with impunity, against the sense, and proceedings of the house. This won him a great reputation with all people who wished well to the king; and he was looked upon as the boldest champion the crown had in both houses; so that such lords, and commons, as really desired to prevent the ruin of the kingdom, willingly complied in a great familiarity with him, as a man resolute in their ends, and best able to promote them. And it may be they believed his reputation at court so good, that he would be no ill evidence there, of other men's zeal and affection; and so all men spoke their minds freely to him, both of the general distemper, and of the passions, and ambition of particular persons: all men knowing him to be of too good a fortune, and too wary a nature, to engage himself in designs of danger or hazard.

"Mr. Waller had a brother-in-law, one Mr. Tomkins, who had married his sister, and was clerk of the queen's council, of very good fame for honesty, and ability. This gentleman had good interest and reputation in the city, and conversed much with those who disliked the proceedings of the parliament, and wished to live under the same government they were born; and from those citizens received infor-

mation of the temper of the people, upon accidents, in the public affairs. And Mr. Waller, and he, with that confidence that uses to be between brethren of the same good affections, frequently imparted their observations, and opinions to each other; the one relating, how many in both houses inclined to peace; and the other making the same judgment upon the correspondence he had, and intelligence he received from the most substantial men of London; and both of them again communicated what one received from the other, to the company they used to converse with; Mr. Waller imparting the wishes and power of the well affected party in the city, to the lords and gentlemen whom he knew to be of the same mind; and Mr. Tomkins acquainting those he durst trust of the city, that such and such lords and gentlemen, who were of special note, were weary of the distractions, and would heartily, and confidently contribute to such an honourable, and honest peace, as all men knew would be most acceptable to the king. And from hence they came reasonably to a conclusion, that if some means were found out to raise a confidence in those who wished well, that they should not be oppressed by the extravagant power of the desperate party; but that if they would so far assist one another, as to declare their opinions to be the same, they should be able to prevent, or suppress, those tumults, which seemed to countenance the distractions; and the houses would be induced to terms of moderation.

"In this time the lord Conway, being returned from Ireland, incensed against the Scots, and discontented with the parliament here, finding Mr. Waller in good esteem with the earl of Northumberland, and of great friendship with the earl of Portland, he entered into the same familiarity; and, being more of a soldier, in the discourses administered questions, and considerations, necessary to be understood by men that either meant to use force, or to resist it; and wished 'that they who had interest, and acquaintance in the city, would endeavour by a mutual correspondence to inform themselves of the distinct affections of their neighbours, that, upon any exigent, men might foresee whom they might trust;' and these discourses being again derived by Mr. Waller to Mr. Tomkins, he, upon occasion, and conference with his companions, insisted on the same arguments; and they again conversing with their friends, and acquaintance, for of all this business, there were not above three who ever spoke together, agreed, 'that some well affected persons, in every parish, and ward, about London, should make a list of all the inhabitants; and thereupon to make a reasonable guess of their several affections,' which at that time was no hard thing for observing men to do, and thence a computation of the strength, and power of that party, which was notoriously violent against any accommodation.

"I am persuaded the utmost project in this

design was, I speak not what particular men might intend, or wish upon their own fancies, to beget such a combination among the party well affected, that they would refuse to conform to those ordinances of the twentieth part, and other taxes for the support of the war; and thereby, or by joint petitioning for peace, and discountenancing the other who petitioned against it, to prevail with the parliament to incline to a determination of the war. And it may be, some men might think of making advantage of any casual commotion, or preventing any mischief by it; and thereupon that enquiry where the magazines lay and discourse of wearing some distinguishing tokens, had been rather casually mentioned, than seriously proposed. For it is certain, very many who were conscious to themselves of loyal purposes to the king, and of hearty dislike of the parliament's proceedings, and observed the violent, revengeful, ruining persecution of all men, by those of the engaged party, were not without sad apprehensions that, upon some jealousy, and quarrel picked, even a general massacre might be attempted of all the king's friends; and thereupon, in several discourses, might touch upon such expedients, as might in those seasons be most beneficial to their safety. But that there was ever any formed design, either of letting in the king's army into London, which was impossible to be contrived; or of raising an army there, and surprising the parliament, or any one person of it, or of using any violence in, or upon the city, I could never yet see cause to believe; and if there had, they would have published such a relation of it, after Mr. Waller had confessed to them all he knew, had heard, or fancied to himself, as might have constituted some reasonable understanding of it; and not have contented themselves with making conclusion from questions that had been asked, and answers made, by persons unknown, and forcing expressions used by one, to relate to actions of another, between whom there had been never the least acquaintance, or correspondence; and joining what was said at London to somewhat done at Oxford, at another time, and to another purpose: for before I finish this discourse, it will be necessary to speak of another action, which, how distinct soever from this that is related, was woven together to make one plot.

"From the king's coming to Oxford, many citizens of good quality, who were prosecuted, or jealously looked upon in London, had resorted to the king, and hoping, if the winter produced not a peace, that the summer would carry the king before that city with an army; they had entertained some discourse 'of raising, upon their own stocks of money and credit, some regiments of foot, and horse, and joining with some gentlemen of Kent, who were likewise inclined to such an undertaking.' Among these was Sir Nicolas Crisp, a citizen of good wealth, great trade, and an active spirited man, who had been lately prosecuted with great severity by the house of commons,

and had thereupon fled from London, for appearing too great a stickler in a petition for peace in the city. This gentleman industriously preserved a correspondence still there, by which he gave the king often very useful intelligence, and assured him 'of a very considerable party, which would appear there for him, whenever his own power should be so near, as to give them any countenance.' In the end, whether invited by his correspondents there, or trusting his own sprightly inclinations and resolutions too much, and concluding that all who were equally honest, would be equally bold, he desired his majesty, 'to grant a commission to such persons, whom he would nominate, of the city of London, under the great seal of England, in the nature of a commission of array, by virtue whereof, when the season should come, his party there would appear in discipline, and order; and that this was desired by those, who best knew what countenance and authority was requisite: and being trusted to them would not be executed at all, or else at such a time as his majesty should receive ample fruit by it; provided it were done with secrecy, equal to the hazard they should run who were employed in it.'

"The king had this exception to it, 'the improbability that it could do good, and that the failing might do hurt to the undertakers.' But the promoter was a very popular man in the city, where he had been a commander of the trained-bands, till the ordinance of the militia removed him; which rather improved, than lessened, his credit; and he was very confident, it would produce a notable advantage to the king; however, they desired it who were there, and would not appear without it; and therefore the king consented to it; referring the nomination of all persons in the commission to him: who, he verily believed, had proceeded by the instruction, and advice of those that were nearest the concernment; and for the secrecy of it, the king referred the preparing, and dispatch of the commission, to sir Nicholas Crisp himself, who should acquaint no more with it, than he found requisite; so without the privacy, or advice of any counsellor, or minister of state then most trusted by his majesty, he procured such a commission as he desired, being no other than the commission of array in English, to be signed by the king, and sealed with the great seal.

"This being done, and remaining still in his custody, the lady Aubigny, by a pass, and with the consent of the houses, came to Oxford to transact the affairs of her own fortune with the king upon the death of her husband, who was killed at Edge-hill; and she having in a few days dispatched her business there, and being ready to return, sir Nicholas Crisp came to the king, and besought him, 'to desire that lady, who had a pass, and so could promise herself safety in her journey, to carry a small box, in which that commission should be with her, and to keep it in her own custody, until a gentleman should

'call to her ladyship for it, by such a token;' that token he said, 'he could send to one of the persons trusted, who should keep it by him, till the opportunity came in which it might be executed.' The king accordingly wished the lady Aubigny, to carry it with great care and secrecy; telling her, 'it much concerned his own service;' and to deliver it in such a manner, and upon such assurance, as is before mentioned: which she did, and, within few days after her return to London, delivered it to a person who was appointed to call for it. How this commission was discovered, I could never learn: for though Mr. Waller had the honour to be admitted often to that lady, and was believed by her to be a gentleman of most entire affections to the king's service, and consequently might be fitly trusted with what she knew, yet her ladyship herself, not knowing what it was she carried, could not inform any body else.

"But about this time, a servant of Mr. Tomkins, who had often cursorily over-heard his master and Mr. Waller discourse of the argument we are now upon, placed himself behind a hanging, at a time they were together; and there, whilst either of them discoursed the language and opinion of the company they kept, over-heard enough to make him believe his information, and discovery, would make him welcome to those whom he thought concerned; and so went to Mr. Pym, and acquainted him with all he had heard, or probably imagined. The time when Mr. Pym was made acquainted with it, is not known; but the circumstances of the publishing it were such as filled all men with apprehensions. It was on Wednesday the 31st of May, their solemn fast day, when, being all at their sermon, in St. Margaret's church in Westminster, according to their custom, a letter or message is brought privately to Mr. Pym; who thereupon, with some of the most active members, rise from their seats; and, after a little whispering together, remove out of the church: This could not but exceedingly affect those who stayed behind; immediately they send guards to all the prisons, as Lambeth-House, Ely-House, and such places, where their malignants were in custody, with directions 'to search the prisoners;' and some other places which they thought fit, should be suspected. After the sermons were ended, the houses met; and were only then told, 'that letters were intercepted going to the king and the court at Oxford, that expressed some notable conspiracy in hand, to deliver up the parliament, and the city, into the hands of the cavaliers; and that the time for the execution of it drew very near.' Hereupon a committee was appointed 'to examine all persons they thought fit; and to apprehend some nominated at that time.' And the same night, this committee apprehended Mr. Waller, and Mr. Tomkins; and, the next day, such others as they suspected.

"Mr. Waller was so confounded with fear, and apprehension, that he confessed whatever

he had said, heard, thought, or seen; all that he knew of himself, and all that he suspected of others; without concealing any person of what degree, or quality soever, or any discourse that he had ever, upon any occasion, entertained with them: What such and such ladies of great honour, to whom, upon the credit of his great wit, and very great reputation, he had been admitted, had spoke to him in their chambers of the proceedings in the houses; and how they had encouraged him to oppose them, what correspondence, and intercourse they had, with some ministers of state at Oxford; and how they derived all intelligence thither. He informed them, 'that the earl of Portland, and the lord Conway, had been particular in all the agitations which had been with the citizens; and had given frequent advice, and directions, how they should demean themselves; and that the earl of Northumberland had expressed very good wishes to any attempt, that might give a stop to the violent actions, and proceedings of the houses, and produce a good understanding with the king.'

"When the committee were thus furnished, they took the examinations of Mr. Tomkins, and such other as they thought necessary, and having at the same time, by some other means, discovered, or concealed it till this time that commission which is before discoursed of, and gotten the very original into their hands, they kneaded both into one plot, and conspiracy; and, acquainting the houses with so much as they thought yet seasonable to publish, they declared, without naming any lords, or other persons, to be interested in the design, save those only who were imprisoned; among whom the lady Aubigny was one; and without communicating any of the examinations, which, they pretended, were not to be common till the conspirators were brought to trial, 'that the original of this conspiracy was from the late London petition for peace,' which was spoken of about Christmas last in the book precedent; 'and that under pretence of peace and moderation, a party was to be formed which should be able to suppress all opponents, and to awe the parliament: That, to this purpose, some of those who were the principal movers, and fomenters of that petition, did continue in the nature of a committee, still to carry on the design: that they held intelligence in both armies, court, and parliament; took a general survey of the numbers, and affections of the several inhabitants throughout the wards, and parishes of the city, and places adjacent; and distinguished all under the titles of men affected, or averse to the king; or indifferent, and neutral persons, carried only by the success, and power of the prevailers: That they were well instructed in the number, and inclinations of the trained-bands of London; the places where the magazines were kept; where the commanders for the parliament dwelt; had thought of places for rendezvous, and retreat, upon any occasion, and of colours, and marks

of distinction between the different parties.—That Mr. Waller and Mr. Tomkins were the principal persons employed, and trusted to give advertisement to, and correspond with, the king's ministers at Oxford; and receive advertisements and commands from thence, for the completing the work; that they two held constant intelligence, and intercourse with the lord Falkland, then principal secretary to the king; and that, from him, they received the signification of the king's pleasure; and that those directions, counsels, and encouragements, had been principally sent by those messengers which had been employed by his majesty to the parliament, under the pretence of peace; and, especially, by Mr. Alexander Hambden; who came with the last message, and was a cousin-german to Mr. Waller. That the lady Aubigney, who had been lately at Oxford, had brought thence a commission to them from the king, by force of arms to destroy, kill, and slay the forces, raised by the parliament and their adherents, as traitors and rebels; and that they had lately sent a message to Oxford by one Hassel, a servant of the king's, to acquaint the lord Falkland, that the design was come to a good perfection; unto which, answer was returned, that they should hasten it with all speed:—That the particulars of the design appeared to be: 1. To seize into their custody the king's children: 2. To seize several members of both houses, the lord Mayor, and committee of the Militia, under pretence of bringing them to a legal trial. 3. To seize upon the out-works, forts, Tower of London, magazines, gates, and other places of importance in the city. 4. To let in the king's forces to surprise the city, and to destroy all those who should oppose them by authority of the parliament. 5. By force of arms to resist all payments imposed by authority of parliament, raised for the support of the armies employed for their just defence, &c. To suspend, if not alter the whole government of the city, and, with assistance of the king's force, to awe, and master the parliament.

“When both houses were awakened, and started with this report, the first thing agreed on, was, ‘a day of thanksgiving to God for this wonderful delivery,’ which shut out any future doubts, and disquisitions, whether there had been any such delivery; and, consequently, whether their plot was in truth, or had been so framed. Then it was said, ‘that as the design was the most desperate, so the carriage was the most subtle, and among persons of reputation, and not suspected; and that there was reason to suspect, many members of both houses were privy to it; and therefore there ought to be all possible care taken to make the discovery perfect, and to unite themselves for the public defence: that if any part were left undiscovered, it might prove fatal to the common-wealth.’ This finding a full consent, it was propounded, ‘that a protestation

‘might be drawn up, by which every member of the two houses might purge himself from any guilt of, or privity in, that conspiracy; and likewise oblige himself to resist, and oppose any such combination.’ They who were under the character of moderate men, and usually advanced all motions of peace, and accommodation, durst not oppose the expedient, lest they should be concluded guilty; most of them having had familiarity with Mr. Waller, and, no doubt, upon sundry occasions, spoken with that freedom to him, as might very well incur a severe interpretation, if, upon this occasion, what they had said should be scanned. And so, before the rising, there was framed by the house of commons, a Vow and Covenant to be taken by the members of both houses, and afterwards by the city, and their army; for their jealousy was now spread over all their own quarters; which covenant, for the rareness of it both in title and style, I think necessary here to insert in the very terms; which were these:

‘A Sacred Vow, and Covenant, taken by the Lords and Commons assembled in Parliament, upon the discovery of the late horrid and treacherous Design, for the destruction of this parliament and the kingdom; the 6th of June 1643.

‘Whereas there hath been, and now is, in this kingdom, a popish, and traitorous Plot for the subversion of the true protestant reformed religion, and the liberty of the subject; and, in pursuance thereof, a popish army hath been raised, and is now on foot in divers parts of this kingdom: and whereas there hath been a treacherous and horrid design, lately discovered by the great blessing and especial providence of God, of divers persons, to join themselves with the armies raised by the king, and to destroy the forces raised by the lords and commons in parliament, to surprise the cities of London and Westminster with the suburbs: by arms to force the parliament; and finding by constant experience, that many ways of force, and treachery, are continually attempted, to bring to utter ruin and destruction the parliament, and kingdom: and that which is dearest, the true Protestant religion; And that, for the preventing and withstanding the same, it is fit, that all, who are true hearted, and lovers of their country, should bind themselves each to other in a sacred Vow and Covenant.’

‘I. A. B. in humility, and reverence of the divine majesty, declare my hearty sorrow for my own sins, and the sins of this nation, which have deserved the calamities, and judgments, that now lie upon it; and my true intention is, by God's grace, to endeavour the amendment of my own ways; and I do farther, in the presence of Almighty God, declare, vow, and covenant, that in order to the security and preservation of the true reformed Protestant religion, and liberty of the subject, I will not consent to the laying down of

'arms, so long as the Papists, now in open war against the parliament, shall by force of arms be protected from the justice thereof. And that I do abhor and detest the said wicked, and treacherous design, lately discovered: and that I never gave nor will give my assent to the execution thereof, but will, according to my power, and vocation, oppose and resist the same, and all other of the like nature. And in case any other like design shall hereafter come to my knowledge, I will make such timely discovery, as I shall conceive may best conduce to the preventing thereof. And whereas I do in my conscience believe, that the forces, raised by the two houses of parliament, are raised, and continued for their just defence, and for the defence of the true Protestant religion, and liberty of the subject, against the forces raised by the king; that I will, according to my power, and vocation, assist the forces raised and continued, by both houses of parliament, against the forces raised by the king without their consent: and will likewise assist all other persons that shall take this oath, in what they shall do in pursuance thereof; and will not directly, or indirectly, adhere unto, nor shall willingly assist the forces raised by the king, without the consent of both houses of parliament. And this vow, and covenant, I make in the presence of Almighty God, the searcher of all hearts, with a true intention to perform the same, as I shall answer at the great day, when the secrets of all hearts shall be disclosed.'

"Though many were much startled at this covenant, and took time to consider of it, there being in the preamble, and positive part, much which very few believed, and in the promissory part a more direct denouncing war against the king, than had been in plain terms before avowed by them, and an absolute protestation against peace, till the king were at their mercy: yet the fear of being concluded guilty of the plot, made them swallow all the rest; and the example of one prevailing with many, there was not a member of either house that took it not: and being thus fettered, and intangled themselves, they sent their committee into the city, to acquaint them with their 'happy discovery,' and how miraculously God had preserved them, and to engage them in the same sacred 'vow, and covenant:' which was readily submitted to: and, by the industry of their clergy, sooner than can be imagined, taken throughout that people. Then it was, with equal diligence, and solemnity, transmitted to their army, that their fears of inconvenience from thence might be likewise purged: and thence it grew the mark of distinction, to know their friends and enemies by: and whosoever refused to take that covenant, needed no other charge to be concluded, and prosecuted, as the highest malignant.

"Being this way secure from any future clamours for peace, they proceeded to try Mr. Tomkins; Mr. Chaloner, a citizen of good

wealth and credit, and most intimate with Tomkins; Mr. Hamdden, who brought the last message from the king; one Hassel a messenger of the king's, who passed often between London and Oxford, and sometimes carried letters and messages to the lord Falkland: and some citizens, whose names were in the commission sent from Oxford; by a council of war; by whom Mr. Tomkins, and Mr. Chaloner were condemned to be hanged; and were both, with all circumstances of severity, and cruelty, executed: the one, on a gibbet, by his own house in Holborn; where he had long lived with singular estimation; and the other, by his house in Cornhill, near the old Exchange. Hassel the messenger saved them farther trouble, and died in prison the night before his trial; And there being no evidence against Mr. Hamdden, but what Mr. Waller himself gave, they gave no judgment against him, but kept him long after in prison, till he died; neither proceeded they capitally against those citizens whose names were in the commission, it not appearing that their names were used with their consent, and privacy; though the brand of being malignants served the turn for their undoing; for all their estates were seized, as theirs were who had been executed.

"There is nothing clearer than that the commission sent from Oxford by the lady Aubigny, had not any relation to the discourses passed between Mr. Waller, Tomkins, and those citizens, or that they, who knew of one, had not any privacy with the other; which if they had had, and intended such an insurrection, as was alleged, Mr. Waller, and Mr. Tomkins, or some one of those lords who were supposed to combine with them, would have been in the commission. Or if the king's ministers had been engaged in the consultation, and hoped to have raised a party which should suddenly seize upon the city, and the parliament, they would never have thought a commission granted to some gentlemen at Oxford, for the major part of the commissioners were there, and a few private citizens, would have served for that work. I am very confident, and I have very much reason for that confidence, that there was no more known, or thought of at Oxford, concerning the matter of the commission, than I have before set forth, nor of the other, than that Mr. Tomkins sometimes writ to the lord Falkland, for Mr. Waller, out of the cautiousness of his own nature, never writ word, and by messengers signified to him, 'that the number of those who desired peace, and abhorred the proceedings of the houses, was very considerable; and that they resolved, by refusing to contribute to the war, and to submit to their ordinances, to declare and manifest themselves in that manner, that the violent party in the city should not have credit enough to hinder any accommodation.' And the lord Falkland always returned answer, 'that they should expedite those expedients, as soon as might be, for that delays made the war more difficult to be restrained.' And if I could

find evidence, or reason, to induce me to believe, that there was any farther design in the thing itself, or that the king gave farther countenance to it, I should not at all conceal it. No man can imagine, that if the king could have entertained any probable hope of reducing London, which was the fomentor, supporter, and indeed the life of the war, or could have found any expedient, from whence he could reasonably propose to dissolve, scatter, and disperse those who, under the name of a parliament, had kindled a war against him, but he would have given his utmost assistance, and countenance thereunto, either by public force, or private contrivance.

"There were very great endeavours used, to have proceeded with equal severity against the earl of Portland, and the lord Conway, (for the accusation of the earl of Northumberland, it was proceeded tenderly in; for though the violent party was heartily incensed against him, as a man weary of them, yet his reputation was still very great), who were both close prisoners; and, to that purpose, their lordships and Mr. Waller were confronted before the committee, where they as peremptorily denying, as he charging them, and there being no other witness but he against them, the prosecution was rather let alone than declined, till after a long restraint they procured enlargement upon bail. Mr. Waller himself, (though confessedly the most guilty; and by his unhappy demeanour, in this time of his affliction, he had raised as many enemies as he had formerly friends, and almost the same) after he had, with incredible dissimulation, acted such a remorse of conscience, that his trial was put off out of Christian compassion, till he might recover his understanding, (and that was not, till the heat, and fury of the prosecutors, was reasonably abated with the sacrifices they had made), and, by drawing visitants to himself, of the most powerful ministers of all factions, had, by his liberality, and penitence, his receiving vulgar and vile sayings from them with humility, and reverence, as clearer convictions and informations than in his life he had ever had; and distributing great sums to them for their prayers, and ghostly counsel; so satisfied them, that they satisfied others; was brought, at his suit, to the house of commons' bar; where, (being a man in truth very powerful in language; and who, by what he spoke and in the manner of speaking it, exceedingly captivated the good will and benevolence of his hearers; which is the highest part of an orator) with such flattery, as was most exactly calculated to that meridian, with such a submission, as their pride took delight in, and such dejection of mind, and spirit, as was like to cozen the major part, and be thought serious; he laid before them 'their own danger, and concernment; if they should suffer one of 'their own body, how unworthy and monstrous soever, to be tried by the soldiers, who might 'thereby grow to that power hereafter, that 'they would both try those, they would not be

'willing should be tried, and for things, which 'they would account no crimes; the inconvenience, and, insupportable mischief whereof, 'all wise common-wealths had foreseen, and 'prevented, by exempting their own members 'from all judgment but their own.' He prevailed, not to be tried by a council of war; and thereby preserved his dear bought life; so that, in truth, he does as much owe the keeping his head to that oration, as Catiline did the loss of his to those of Tully: and by having done ill very well, he, by degrees, drew that respect to his parts, which always carries some compassion to the person, that he got leave to compound for his transgression, and them to accept of 10,000*l.* (which their affairs wanted) for his liberty; whereupon he had leave to recollect himself in another country, for his liberty was to be in banishment, how miserable he had made himself, in obtaining that leave to live out of his own. And there cannot be a greater evidence of the inestimable value of his parts, than that he lived, after this, in the good affection and esteem of many, the pity of most, and the reproach and scorn of few, or none."

Whitelocke, speaking of the access to the King, of the Parliament's Commissioners in the late treaty at Oxford, says "January. 28, 1642-3. All of them kissed his hand, not as they were ranked in the Safe Conduct, but according to their several degrees. Mr. Pierpoint before the knights, he being an earl's son, and Mr. Winwood before Mr. Whitelocke, he being the eldest knight's son; and Mr. Waller was the last. The king said to him 'though you are the last, yet you are not the 'worst, nor the least in my favour.' The discovery of a Plot then in hand in London, to betray the Parliament, wherein Mr. Waller was engaged with Challoner, Tomkins, and others, which was then in agitation, did manifest the king's courtship to Mr. Waller to be for that service."—Afterwards he says, "June began with the arraignment of Waller, a member of the house of commons, Tomkins, Challoner, and others, for conspiring to surprize the city militia, and some members of parliament, and to let in the king's forces, to surprize the city, and dissolve the parliament.—Waller, a very ingenious man, was the principal actor and contriver of this Plot, which was in design when he and the other commissioners were at Oxford with the Parliament's Propositions. And that, being then known to the king, occasioned him to speak the words to Waller when he kissed his hand, ('though you 'are the last, yet you are not the worst, nor 'the least in our favour') as is before remembered. When he was examined touching this Plot, he was asked whether Selden, Pierpoint, Whitelocke, and others by name, were acquainted with it: he answered, 'That they were not,' but that he did come one evening to Selden's study, where Pierpoint and Whitelocke then were with Selden, on purpose to impart it to them all, and speaking of such a thing in general terms, those gentlemen did so

inveigh against any such thing, as treachery and baseness, and that which might be the occasion of shedding much blood. That, he said he durst not, for the awe and respect which he had for Selden, and the rest, communicate any of the particulars to them; but was almost disheartened himself to proceed in it.—They were all upon their Trial condemned, Tomkins and Challoner only were hanged, Waller had a reprieve from general Essex, and after a year's imprisonment, he paid a fine of 10,000*l.* was pardoned, and travelled into France."

Doctor Johnson in his *Life of Waller* informs us, that "he stayed some time at Roan, where his daughter Margaret was born, who was afterwards his favourite, and his amanuensis. He then removed to Paris, where he lived with great splendor and hospitality; and from time to time amused himself with poetry, in which he sometimes speaks of the rebels, and their usurpation, in the natural language of an honest man. At last it became necessary, for his support, to sell his wife's jewels; and being reduced, as he said, at last to the rump-jewel, he solicited from Cromwell permission to return, and obtained it by the interest of colonel Scroop, to whom his sister was married. Upon the remains of a fortune, which the danger of his life had very much diminished, he lived at Hall-barn, a house built by himself, very near Beaconsfield, where his mother resided. His mother, though related to Cromwell and Hampden, was zealous for the royal cause, and when Cromwell visited her, used to reproach him; he, in return, would throw a napkin at her, and say he would not dispute with his aunt: but finding in time that she acted for the king, as well as talked, he made her a prisoner to her own daughter, in her own house. If he would do any thing he could not do less. Cromwell, now protector, received Waller, as his kinsman, to a familiar conversation. Waller, as he used to relate, found him sufficiently versed in ancient history; and, when any of his enthusiastic friends came to advise or consult him, could sometimes overhear him discoursing in the cant of the times; but when he returned, he would say, 'Cousin Waller, I must talk to these men in their own way;' and resumed the common style of conversation."

Mr. Seward in the second volume of his "*Anecdotes*," p. 135, says, 'The original of the following letter of Mr. Waller to colonel Godwin, when he was accused of being con-

cerned in the plot of 1643 against the parliament, is in lord Wharton's papers in the Bodleian Library at Oxford.'

'Sir; If you be pleased to remember what your poor neighbour has been, or did knowe what his heart now is, you might perhaps be inclined to contribute something to his preservation. I hearde of your late being in towne, but am so closely confined, that I knowe not how to present my humble service and request unto you. Alas, Sir! what should I say for myself! Unless your own good-nature and proneness to compassion incline you towards me, I can use no argument, having deserved so ill; and yet, it is possible you may remember, I have heretofore done something better, when God blest me so as to take you and my dear cosen (your late friend now with God) for my example. Sir, as you succeed him in the general hopes of your country, so do you likewise in my particular hope. I knowe you would not willingly have that fall out, which he (if alive) would have wished otherwise. Be not offended (I beseech you) if I put you in minde what you were pleased to say to your servant, when the life of that worthy person was in danger, in a noble cause as anye is now in the country. You asked me then, if I were content my kinsman's blood should be spilt: and truly I thinke you found not by my words only, but my actions also, my earnest desire to preserve and defend him, having had the honour to be employed among those who perswaded the shreves (the sheriffs) with the trayned bands to protect him and the rest in the same danger, to the house. As then you were pleased to remember I was of his blood, so I beseech you forgett it not now, and then I shall have some hopes of your favour. Sir, my first request is, that you will be nobly pleased to use your interest with Dr. Dorislaus, to shew me what lawful favour he may in the tryall; and if I am forfeited to justice, that you will please to incline my Lord General to grant me his pardon. Your interest, both with his excellence, and in the house, is very great: but I will not direct your wisdom which way to favour me: only give me leave to assure you, that (God with his grace assisting the resolution he has given me) you shall never have cause to repent the saving a life which I shall make haste to render you again in the cause you maintain, and express, myself during all the life you shall lengthen.'

'Sir,  
'Your most humble, faithful, and  
'obedient Servant,  
'EDMUND WALLER.'

173. The Trial of CONNOR Lord MACGUIRE,\* at the King's-Bench, for High Treason, in being concerned in the Irish Massacre:† 20 CHARLES I. A. D. 1645.

ON Monday the 11th of November 1644, the prisoner was brought to the bar of the King's Bench to be arraigned; By the Indictment he was charged, That he, together with sir Phil. O-Neale, Philip O-Relly, Roger Moore, esq. Roger Macguire, esq. Toole O-Coule, clerk, being a Roman priest, Hugh Macmahone, and divers other persons, false traitors, unknown; as a false traitor against the king's majesty, his supreme liege lord, not having the fear of

God in his heart, nor considering his duty or allegiance, but being seduced by the instigation of the devil, intending altogether to withdraw, blot out, and extinguish the cordial love and due obedience which faithful subjects owe to their sovereign; did, on the 20th of October, 17 Car. at Dublin in Ireland, in the parts beyond the seas, and at divers other times, both before and after, as well at Dublin as elsewhere, falsely, maliciously, and traitorously

\* This Macguire was one principally designed for the surprisal of the Castle of Dublin, and the securing or murdering the Lords, Justices and Council, for which intent he came purposely to Dublin the day before; but the Plot being detected that night, he fled disguised from his usual lodgings at one Nevil's, a chyrurgeon in Castle-street, and secretly hid himself at one Ker's, a taylor in Cook-street, where he was found in a cook-loft by John Woodcock, one of the sheriffs of Dublin, standing with his cloak wrapt about him in an obscure place, in which posture he was apprehended and brought before the Lords Justices and Council, where he made some sort of a Confession, upon which he was committed prisoner to the Castle the 23d of October 1641, from whence he was sent into England the 12th of June following, and continued prisoner there till the 18th of August 1644, when he made his escape; but was retaken the 20th of Oct. following. Former edition.

The following is Rushworth's Account:

"These gentlemen," (Lord Macguire and Hugh Oge Mac Mahone, esq. who being arraigned with lord Macguire and pleading Not Guilty, and putting himself for trial upon God and his country, was convicted and executed in Nov. 1644), "were two of the principal contrivers of the Irish rebellion, and massacre of the Protestants in that kingdom; and taken upon the first discovery October 22, 1641, at Dublin, being come up thither on purpose to surprize the castle, the next day, the time appointed for the general insurrection; Mac Mahone upon his first apprehension freely confessed, and boldly avowed the Plot; but Macguire would then acknowledge nothing; but on the 26th of March following, being examined before the lord Lambert and sir Robert Meredith, Chancellor of his majesty's Court of Exchequer, he owned and set forth much of the Conspiracy, which examination you have before in the first chapter relating to Ireland. About July, 1642, they were sent over into England, and committed to the Tower, and by means of the multiplicity of affairs wherein the two houses were involved, and the difficulty of having the witnesses against them from Ire-

land, they continued there in custody till Saturday the 17th of August 1644. And then by confederacy with two priests that belonged to the Spanish ambassador, and one Mrs. Leviston over against the New Exchange in the Strand, in whose house the French agent lay, they having got a small steel saw, therewith in the night sawed asunder the door of their chamber, which was above two inches thick, and so with cords got over the Tower-wall, and swam over the ditch; whereupon the parliament set forth an order for their apprehension, promising 100*l.* to any that should bring them in, or either of them, dead or alive; and that whosoever should harbour or relieve them, should be prosecuted as traitors. No news was heard of them till the 19th of September, and then they having got lodgings in a constable's house in Drury-lane, and one of them looking out of the window or balcony to call a woman that cried oysters, it happened at that instant a servant of sir John Clotworthy's espied him, and instantly gave notice to his master and the lieutenant of the Tower, who came and seized them, and carried them back to the Tower; Mrs. Leviston's room was also searched and she taken into custody, but because the French minister had lodgings in her house, to prevent any occasion of offence, a declaration was drawn up to give his most Christian majesty satisfaction touching this affair. This breaking prison put the two houses upon expediting their trial."

† Of this shocking and terrific Massacre, May gives the following Account:

"About the end of October, 1641, during the king's abode in Scotland, the most barbarous and bloody rebellion that ever any age, or nation, were guilty of, broke out in Ireland. The atrocity of it is without a parallel; and as full of wonder was the close carriage of so black and far-reaching a design. The innocent Protestants were, upon a sudden, disseized of their estates, and the persons of above two hundred thousand men, women, and children, murdered, many of them with exquisite and unheard-of tortures, within the space of one month.

"That which increased the amazement of most men, was, the consideration that the an-

conspire, imagine, and compass utterly to deprive and disinherit the king's majesty of his royal estate and kingdom of Ireland; to bring his majesty's person to death and destruction; to raise sedition, and breed and cause miserable slaughter and destruction amongst the king's subjects throughout all the whole kingdom; to make an insurrection and rebellion against the king his sovereign; to levy public, open, bloody, and fierce war against the king in that

cient hatred, which the Irish, a thing incident to conquered nations, had borne to the English, did now seem to be quite buried and forgotten; forty years of peace had compacted those two nations into one body, and cemented them together by all conjunctures of alliance, internarrriages, and consanguinity, which was in outward appearance strengthened by frequent entertainments, and all kinds of friendly neighbourhood. There seemed in many places a mutual transmigration, (as was observed by a noble gentleman, whose place in that kingdom gave him means to know it, out of whose faithful relation of that rebellion and massacre, I have partly collected my discourse of it), into each others manners. Many English strangely degenerating into the Irish manners and customs; and many Irish, especially of the better sort, having taken up the English language, apparel, and decency of living in their private houses. The present government was full of lenity and moderation; and some redress of former grievances had then been newly granted by the king to his Irish subjects; the same gentleman in his *History of the Irish Rebellion*, where the reader may more fully inform himself of particulars, affirms, that he could never hear of any one Englishman that received any certain notice of this conspiracy, till that very evening before which it was to be put in execution. Some intimations had been given by sir William Cole, in a letter to the lords justices sir William Parsons and sir John Burlace, with the rest of the council, concerning dangerous resorts, and meetings of some persons who were judged fit instruments for such a mischief.

"This horrid Plot, contrived with so much secrecy, was to take effect upon the 23rd of October. The castle of Dublin, the chief strength of that kingdom, and principal magazine of the king's arms and ammunition, where all those arms which were taken from the late disbanded Irish army, and others which the earl of Strafford had provided, were deposited, was to be seized by nine o'clock that day by the rebels; to which purpose many of the Irish gentry of great quality were the night before come to Dublin, to be in readiness for the performing of that exploit. It was further agreed among those conspirators, that upon the same day, all other his majesty's forts and magazines of arms and ammunition in that kingdom should be surprized, and all Protestants and English that would not join with them, should be cut off. But it pleased God to prevent the seizure of that castle, and so to save the king-

dom; to change and alter, according to their own wills, the government of the kingdom, and the Religion there established, and totally to subvert the well-ordered state of that commonwealth; to procure and bring in divers strangers and foreigners, not being the king's subjects, in a warlike manner to invade that kingdom of Ireland, and to levy war there.

And in execution of these their wicked treasons and traitorous conspiracies, 20th Oct.

dom from being wholly lost in one day, and that by a means strange and unexpected. Hugh Mac Mahon, esq. grandson to the famous rebel Tyrone, a gentleman of a plentiful fortune in the county of Monagan, and one that had served in armies under the king of Spain as lieutenant-colonel, a principal agent in this rebellion, and coming with others, as aforesaid, into Dublin the day before that great design was to be put in execution, being the 22nd of October, admitted into his company at a tavern in that city, one Owen Conally, of Irish extract, but a Protestant, and servant to sir John Clotworthy, a member of the English parliament. To this Owen he revealed so much, as they were drinking, that the honest man, escaping from him, (though not without great danger to himself, at the present) informed the lord justice Parsons that night about nine o'clock, of a dangerous design upon the whole kingdom; which being taken into present consideration, Mac Mahon was apprehended, and, after his examination, the lord Maguire also, another principal actor; who were both committed to close custody, and the castle secured with all diligence. But many conspirators of great note escaped that night out of Dublin, as Birne, More, Plunket, and others.

"The lords of the council, amazed at the discovery of so horrid a treason, did, notwithstanding, endeavour (since there was no prevention; for Mac Mahon had plainly told them, when he was examined, that by that time all the counties of Ireland were risen), to use the best remedies to that desperate disease; and hoping that perchance the news how the plot for seizing of Dublin castle was disappointed, might somewhat dishearten the conspirators in remote parts, and encourage the good subjects with more confidence to stand upon their guard; issued forth a Proclamation presently, and by careful messengers spread it into as many parts of the kingdom as they could. The effect of which proclamation was to signify the discovery of the treason, and exhort all men to their duty in suppressing of it.

"But the general design was past prevention; and that very day came in some poor English Protestants, and others in a short time, every day, and almost every hour; shewing how they had been robbed, their houses surprized by the rebels, whose outrage daily increased in rapine and murdering, and firing towns and villages in divers counties. To oppose therefore the growth of that desperate

17 Car. the defendant Connor Macguire, at Dublin, and divers other times and places, by one Toole O'Coule, and divers other messengers, by him sent to Owen O'Neale, being then in Flanders, did move and incite Phil. O'Neale to levy and raise an army in Flanders, and thence to bring that army over into Ireland in an hostile manner, to invade that kingdom.

And further to put in execution their traitorous purposes, the defendant, together with Hugh

Macmahune, Phil. O'Neale, Phil. O'Relly, Roger Moore, Roger Macguire, and Toole O'Coule the priest, 20 Oct. 17 Car. at Dublin, and divers other times and places in Ireland, before and after, did traitorously conspire to enter into, seize, get into their own power, and surprize the king's castle at Dublin, and all other the king's castles and forts in that kingdom, and the magazine therein. And at the same time unlawfully and traitorously did endeavour

malady, the lords justices, dispatching letters to the king in Scotland, and the earl of Leicester, lately made lieutenant of Ireland by the king, and yet resident at London, of their lamentable condition, examined with all diligence how they were provided for such a war. They found in Dublin stores, arms for 10,000, with artillery, powder, match and lead proportionable, laid in by the late earl of Strafford, though designed by him another way, yet reserved by God's providence for this service. But the officers and soldiers of the old standing army were so much dispersed into remote places of the kingdom for the guard of other forts, that there was scarce any possibility of drawing a considerable company together to defend Dublin, or make head against the rebels in the north. The greatest mischief to the state, and advantage to the rebels, was, that there was no money in the Exchequer; besides, the king's revenues, and rents of English gentlemen due for that half year, were either in tenants', or collectors' hands in the country, and must unavoidably fall into the rebels' power; so that although their disease were present, the only means of cure was remote, which was a dependence upon some supplies from the parliament of England.

"Upon the very day designed for surprisal of the castle at Dublin, the 23rd of October, the northern rebels broke out in the province of Ulster, and in a few days got possession of so many towns, forts, and gentlemen's houses, within the counties of that province, as might seem almost incredible, if we consider only the chief actors, men of no great skill in martial affairs, or any policy: such as sir Phelim O'neale, and his brother, with the rest; and not rather, which indeed was the true reason, the general engagements of the Irish, and their deep dissimulation, concurring with the great credulity of the English, upon the causes aforementioned, of so long intermixed cohabitation, and friendly relations betwixt them. Both these were the causes which afterward increased the massacre of the English, who when the fire brake out, implored the friendship of their Irish neighbours, landlords, or tenants; committing into their hands and protection their treasure, wives and children, with all that was dear unto them, in hope that former friendship might prevail. But they generally either betrayed them into the power of other rebels, or perfidiously and cruelly murdered them with their own hands: which extreme falsehood and cruelty in the Irish was thought to be much in-

creased by the charnings of their priests, who told them, that it was a mortal sin to protect, or relieve, any of the English.

"That intermixture of the nations, did also at this sad time, make the English less able to defend themselves, than if they had lived singly by parties of their own. For where the English were able to make any head, or stand upon their guard, though in such an amazement and sudden surprisal, they defended themselves beyond belief, till the Irish, principled by their priests, offered them fair quarter, with assurance of lives and goods, safe conduct, and free passage to what places they pleased; confirming such covenants with deep oaths and protestations, and sometimes their hands and seals. But when they had the deceived English in their power, the soldiers spoiled, stripped, and murdered them at their pleasure. So were many served, as at Armagh by sir Phelim O'neale, and his brother; at Belterbert by Philip Orelley; at Longford, Tullough, and other castles in the county of Fermanagh by other of those rebels. But if the English, who stood to defend their private houses, and so were the more easily cut off, could have deserted their habitations at the first rising, and joined themselves into bodies, they might happily have made a better resistance. Whilst these inhuman cruelties and massacres were acting in miserable Ireland, and daily spreading themselves in every part of that kingdom, many counties in several provinces declaring themselves, and following the barbarous example of those in Ulster, the sad news was brought to the parliament of England.

"The first letters, which before were mentioned, sent from the lords justices upon the 25th of October, were carried, and delivered at London on the last day of that month by Owen O'Coually the happy discoverer of the first plot; with a full information of all particulars within his knowledge: which by the lords, who were first acquainted with it, was delivered at a conference to the house of commons; who presently ordered, That the house forthwith should be resolved into a committee, to consider the matter offered concerning the rebellion in Ireland, as likewise to provide for the safety of England. By which committee it was agreed that 50,000*l.* should presently be provided; and that the loan of it should be entreated from the city of London upon public security. 2. That a select committee of both houses be named to consider the affairs of Ireland. 3. That Owen O'Coually, who disco-

your and actually attempt to gain into their possession and power; and to surprize the said Castle of Dublin, and the munition therein.

That the defendant with the other persons named, Philip O-Neale and others, further to bring to pass their most horrid wicked treasons and conspiracies, on the 22d of October, 17 Car. at Charlemont, and other places, before and after, being armed and arrayed with a great multitude in a warlike manner, with

vered this great treason, should have 500*l.* presently paid him; and 200*l.* per ann. pension, till provision in land of a greater value be made for him. 4. That papists of quality be secured in their several counties within England. 5. That no persons whatsoever, except those who are merchants, shall be admitted to go over into Ireland, without certificate from the Committee of both houses appointed for the affairs of Ireland.

"These things were reported to both houses, and willingly assented to, within two days after the discovery first made unto them of that rebellion. And, notwithstanding those present distractions in England, which began then to appear, part of every day, during that November, was allotted to the consideration of Ireland. Within four days after the beginning of which month, they ordered many particulars of great import for the relief of it, consisting of supplies of money, magazines of victuals, ammunition of all sorts, courses to be taken for raising forces for the occasions of that kingdom; and shipping for guard of their sea coasts; as more particularly appeareth in the records of parliament.

"Whilst the English parliament were thus ordering the affairs of bleeding Ireland, other letters from the lords justices, bearing date the 4th of November, were brought and communicated to both houses. Who, in earnest zeal to the promotion of that business, voted two hundred thousand pounds to be raised for suppressing the Irish rebellion, securing England, and payment of the public debts. For which, the city of London must of necessity be made use of, collections through the kingdom being too slow for such an urgency. And to encourage the city in it, an order was made to secure them for monies formerly lent, and to allow them the full interest of eight per cent. for all together.

"Whilst the English parliament were thus busied about the relief of Ireland; the horrid rebellion with a swift motion run throughout that unhappy kingdom, many counties daily joining with them, and divers lords and gentlemen, who for many days had lived unsuspected in Dublin, went into the country to side with the rebels, and act their parts in those inhuman outrages. The lords justices, and privy council were enough troubled to secure Dublin, to victual the castle, and prepare defence against those dangers, which threatened the city, and were made much more by the fears of spoiled people resorting thither.

banners displayed, drums, swords, staves, guns, and other invasive and defensive weapons, did falsely and traitorously prepare and levy open fierce and bloody war against the king's majesty; and the same 22d of October, seized and surprized the king's fort at Charlemont, and then and there maliciously and traitorously did kill and murder Toby lord Calfield, Francis Davies, and others of the king's subjects that were Protestants.

"But the care of the privy council extended further, notwithstanding the troubles there, than to the city of Dublin; and, having a magazine of arms within the castle, resolved so to dispose of them, as that resistance might be made against the rebels in other parts. Some arms were happily disposed to such gentlemen (sir Henry Tichborne, sir Charles Coote, and others, of whom more hereafter) as to their lasting honour did excellent service. But another part were worse than lost, those which were distributed to the lords and gentlemen of the English pale; who afterwards declared themselves for the rebels, and used the arms to the destruction of those, who put them into their hands. That English pale is a large circuit of land possessed at the first conquest of Ireland by the English, and ever since inhabited by them; containing divers counties, as Dublin, Meth, Lowth, Kildare, &c.

"The lords of the council thought fit to trust those lords and gentlemen of the pale both with commissions and arms (though many of them professed Papists) hoping that this great confidence would work so far upon their hearts, if any truth or loyalty were left there, as to keep them at least, from joining with the enemy; but if they were honest, would enable them to oppose the threatening incursions of the northern rebels. This great trust the council were more encouraged to repose in these perfidious lords and gentlemen of the pale, because themselves had appeared at Dublin of their own accords, professing truth and loyalty, with deep and solemn protestations, and that they were most forward, and ready to concur with their lordships in that service.

"But so great an affliction was to fall upon unhappy Ireland, that all those lords that were Papists, after they had received commissions, and arms, notwithstanding all their deep vows, did most perfidiously soon after desert their houses, and openly declare themselves in actual rebellion: such as were viscount Mongarret, Gormanston, and Costelloe, Dillon, Birne, Beller, Talbot, and many others.

"The condition of Dublin was more lamentable every day than other; and not so much afflicted were they with fears and dangers which threatened themselves, as that extreme sorrow, which compassion must needs work in them, toward all the suffering English which resorted thither. Dublin was the sanctuary of all the despoiled Protestants; and by that means, the sad stage, upon which all horror was represented; and what mischiefs soever were acted

That the defendants, 4 Junii, 18 Car. at the castles of Kalagh and Cragan, and other times and places, before and after, levied war, seized and surprized those castles, and did kill and murder Owen Powel and William Cosens, and many other of the king's Protestant subjects in that kingdom.

in other parts, were there discovered and lamented. Their eyes were sad witnesses of the rebels' cruelty in those despoiled English which daily resorted to the city; but their ears much more afflicted with relation of those horrid tortures which had been used to those who died in other parts. Their eyes could not, but extremely suffer from such wretched spectacles as daily from all parts presented themselves; people of all conditions and qualities, of every age and sex, spoiled, and stripped, with no coverings, but rags, or twisted straw, to hide their privities; some wounded almost to death, others frozen with cold, some tired with travel, and so surbated that they came creeping on their knees; others famished beyond all relief. And besides the miseries of their bodies, their minds tortured with the loss of all their fortunes, and sad remembrance of their husbands, wives, or children most barbarously murdered before their faces. In this most lamentable plight, with wasted bodies and distracted minds did they arrive at Dublin; some to be relieved, some entombed, which was more than their murdered friends could obtain from the rebels, insomuch as they appeared like walking ghosts in every street, and all the barns, stables, and out-houses were filled with them, where they soon died after they had reached the city, in so great numbers, that all the church-yards of Dublin could not contain them; but the lords were enforced to take in large pieces of ground on both sides of the river, to set apart for burying places.

"But that part of this woeful tragedy, which was presented to their eyes, was the least, and but the shadow of that other, which was related to their ears, of which the readers and all posterity may share the sorrow. Many hundreds of those which had escaped, under their oaths, lawfully taken upon examination, and recorded with all particulars, as may be seen at large in the Records, delivered to the council what horrid massacres the bloody villains had made of men, women, and children; and what cruel inventions they had to torture those, whom they murdered; scarce to be equalized by any the most black and baleful story of any age.

"Many thousands of them at several places, too many to be here inserted, after all despites exercised upon them living, put to the worst of deaths; some burned on set purpose, others drowned for sport and pastime; and if they swam, kept from landing with poles, or shot, and murdered in the water; many were buried quick, and some set into the earth breast-high, and there left to famish. But most barbarous, as appears in very many examinations, was that cruelty, which was shewed to great belied wo-

men; whom the villains were not content to murder, but ripped up their bellies, and many times took delight to see the hogs eat the abortive infants. But I am loth to dwell upon so sad a narration.

The defendant pleaded Not Guilty. And being demanded how he would be tried;

men; whom the villains were not content to murder, but ripped up their bellies, and many times took delight to see the hogs eat the abortive infants. But I am loth to dwell upon so sad a narration.

"The greatest part of these inhuman cruelties were acted by the Irish upon the poor unarmed Britons; before any provocation given unto them: and the blood of so many thousand innocent persons sacrificed to their mere malice, as many afterwards were sacrificed to their revenge; as, whensoever the Irish received any blow from English forces, the English Protestants that lived among them, were murdered in great numbers."

Rushworth gives many details, and our subsequent historians of these times relate the same dismal story with different degrees of minuteness, and with different expressions of eloquence. The Irish rebels pretended to have the king's authority for their proceedings, and pleaded a commission from him, and the king's enemies in England imputed all these barbarities to him. On this occasion, Hume expresses himself thus; "It is now so universally allowed, notwithstanding some mooting to the contrary, that the king had no hand in the Irish rebellion, that it will be superfluous to insist on a point which seems so clear. I shall only suggest a very few arguments, among an infinite number which occur. (1.) Ought the affirmation of perfidious, infamous rebels, ever to have passed for any authority? (2.) Nobody can tell us what the words of the pretended commission were. That commission which we find in Rushworth, vol. 5, p. 400, and in Milton's Works, Toland's edition, is plainly an imposture: because it pretends to be dated in October 1641, yet mentions facts which happened not till some months after. It appears that the Irish rebels, observing some inconsistency in their first forgery, were obliged to forge this commission anew, yet could not render it coherent or probable. (3.) Nothing could be more obviously pernicious to the king's cause than the Irish rebellion; because it increased his necessities, and rendered him still more dependent on the parliament, who had before sufficiently shewn on what terms they would assist him. (4.) The instant the king heard of the rebellion, which was a very few days after its commencement, he wrote to the parliament, and gave over to them the management of the war. Had he built any projects on that rebellion, would he not have waited some little time to see how they would succeed? Would he presently have adopted a measure which was evidently so hurtful to his authority? (5.) What can be imagined to be

## The Copy of the Plea.

He pleaded the statute of Magna Charta, 10 Feb. 9 Hen. 3. That none should be condemned but by trial of his peers; and pleaded the statute of 10 Hen. 7. That all the statutes made in England should from thenceforth be in force in Ireland.

And pleaded, That before the time of the several treasons charged in the indictment, Bryan Macguire, his father, by letters patents was created baron of Enniskillen, in Ireland, to him and the heirs males of his body: By force whereof his father was seized of the barony in fee-tail, and 1 Feb. 12 Car. died so seized; after whose death the barony descended to the defendant, by virtue whereof he was a baron of Ireland: And that at a parliament held at Dublin, 16 March, 16 Car. which was there continued till the 7th of August after,

the king's projects? To raise the Irish to arms, I suppose, and bring them over to England for his assistance. But is it not plain, that the king never intended to raise war in England? Had that been his intention, would he have rendered the parliament perpetual? Does it not appear, by the whole train of events, that the parliament forced him into the war? (6) The king conveyed to the justices intelligence which ought to have prevented the rebellion. (7) The Irish catholics, in all their future transactions with the king, where they endeavour to excuse their insurrection, never had the assurance to plead his commission. Even among themselves they dropped that pretext. It appears that sir Phelim O'Neale, chiefly, and he only at first, promoted that imposture. See Carte's Ormond, vol. iii. No. 100, 111, 112, 114, 115, 121, 132, 137. (8) O'Neale himself confessed the imposture on his trial and at his execution. See Nalson, vol. ii. p. 528. Maguire, at his execution, made a like confession." [This is rather overstated; Maguire's words are "There was no commission that I ever saw." See the account of his execution in the text, p. 688.] "(9) It is ridiculous to mention the justification which Charles 2, gave to the marquis of Antrim, as if he had acted by his father's commission. Antrim had no hand in the first rebellion and the massacre. He joined not the rebels till two years after: It was with the king's consent, and he did important service in sending over a body of men to Montrose."

The two houses of parliament, in their Declaration published in May 1642, say, "That the rebellion in Ireland was framed and cherished by the Popish and malignant party in England, is not only affirmed by the rebels, but may be cleared by many other proofs: the same rebellious principles of pretended religion, the same politic ends are apparent in both; and their malicious designs and practices are masked and disguised with the same false colour of their earnest zeal to vindicate his majesty's prerogative from the supposed oppression of the parliament: how much these

and then adjourned to the 9th of November following, and then prorogued to the 24th of Feb. thence next following, and from thence continued till the 24th of June, 18 Car.

That he was as one of the noblemen and peers of that parliament; and that the 23d of October, 17 Car. he was arrested and imprisoned upon pretence of the several treasons in the Indictment mentioned, and there continued till the 12th of June, 18 Car. when he was brought against his will to Westminster, and thence committed to the Tower of London in strict custody. And averred his plea, and prayed that he might be tried and judged by his peers in Ireland.

Whereunto the king's counsel demurred in law, and the defendants joined in the demurrer.

Upon this Plea \* of the lord Macguire, the

treacherous pretences have been countenanced by some evil counsel about his majesty may appear in this, That the Proclamation, whereby they were declared traitors, was so long withheld as to the 2d of Jan. though the rebellion broke forth in Oct. before; and then no more but 40 copies appointed to be printed, with a special command from his majesty not to exceed that number; and that none of them should be published till his majesty's pleasure were further signified, as by the warrant appears; so that a few only could take notice of it. This was made more observable, by the late contrary proceedings against the Scots; who were, in a very quick and sharp manner, proclaimed traitors; and those Proclamations forthwith dispersed, with as much diligence as might be, through all the kingdom, and ordered to be read in all churches, accompanied with public prayers and execrations."

The Warrant above referred to was as follows: "It is his majesty's pleasure that you forthwith print, in a very good paper, and send unto me, for his majesty's service, forty copies of the Proclamation inclosed, leaving a convenient space for his majesty to sign above, and to affix the privy-signet underneath: and his majesty's express command is, That you print not above the said number of forty copies; and forbear to make any further publication of them, till his pleasure be further signified, for which this shall be your warrant.—EDWARD NICHOLAS. Whitehall, January, 2, 1641. To his Majesty's Printer." See 2 Cobb. Parl. Hist. 1253. Concerning the king's subsequent transactions with the Irish, see Hume's Hist. vol. 7, note (B.) and Laing's Hist. of Scotland, vol. 3, note XJ.

\* See Mr. Pryn's long Argument of this Point, at the end of the case. See also Hale's H. P. C. vol. 1, p. 155. See the case of sir John Perrott, ante, vol. 1, p. 1315, and that of the duke of Hamilton, A.D. 1649 post. See, too, East's Pleas of the Crown, c. 2, § 41, and the statutes, cases, and other authorities there mentioned. See also the Stat. 44 G. 3, c. 92, (amended by 45 G. 3, c. 92). By the former of these, s. 3

beginning of Hilary Term, judge Bacon delivered his Judgment, That a baron of Ireland was triable by a Jury in this kingdom. After which, the house of commons declared their assent unto his opinion in this following Vote :

Die Sabbati, 8 Feb. 1645.

“Resolved upon the question, That the house doth approve of the Judgment given by master Justice Bacon, in over-ruling the Plea of the lord Macguire, and of the manner of the Trial upon the indictment of High-Treason in the King's-Bench ; and the Judge is hereby required to proceed speedily thereupon, accord-

and 4, after reciting that it may frequently happen, that felons and other malefactors in that part of the United Kingdom called Ireland, make their escape into that part of the united kingdom called Great Britain ; as also that felons and other malefactors in that part of the united kingdom, called Great Britain, may make their escape into that part of the united kingdom, called Ireland, whereby their offences often remain unpunished, there being no sufficient provision by the laws then in force in Great Britain, and Ireland, respectively for apprehending such offenders and transmitting them into that part of the united kingdom, in which their offences were committed ; for remedy thereof it is enacted that after August 1, 1804, if any person or persons, against whom a warrant shall be issued, by any of the judges of his majesty's court of King's-bench, &c. or other person having authority to issue the same, within Ireland, for any crime or offence against the laws in force in Ireland, shall “escape, go into, reside, or be” in any place in Great Britain, it shall and may be lawful for any justice of the peace, of the county, &c. in Great Britain, whither or where such person or persons shall “escape, go into, reside, or be” to indorse his name on such warrant, which warrant so indorsed shall be a sufficient authority to the person or persons bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all constables or other peace officers of the county, &c. where such warrant shall be so indorsed, to execute the said warrant in the county, &c. where it is so indorsed, by apprehending the person or persons against whom such warrant is granted, and to convey him, her, or them, by the most direct way into Ireland, and before one of the justices of the peace, of the county, in Ireland, living near the place and in the county where he, she, or they shall arrive and land, which justice of the peace, is thereby required to proceed with regard to such person or persons, as if the said person or persons had been legally apprehended in the said county, in Ireland : and the like enactments are made with respect to offenders in Great Britain, escaping, going into, residing, or being in any place in Ireland. See also the case of the King v. the Hon. Rob. Johnson, A. D. 1805, *infra*, & 6 East's Rep. 583.

ing to law and justice. The lords concurrence to be desired herein ; master Recorder is appointed to carry it up.”

Upon this Vote of the honourable house of commons, the house of peers afterwards declared their concurrence ; and thereupon this ensuing Order was passed by both houses of parliament.

Die Lunæ, 10 Feb. 1645.

“Ordered by the lords and commons in parliament assembled, That the said houses do approve of the Judgment given by master Justice Bacon, in over-ruling the Plea of the lord Macguire, and of the manner of the Trial upon the indictment of High-Treason in the King's Bench ; and the Judge is hereby required to proceed speedily thereupon, according to law and justice. JOHN BROWN, Cler. Parl. HENRY ELSING, Cler. Parl. D. C.”

On Monday Feb. 10, the lord Macguire was brought from the Tower of London, by the guard belonging thereunto, unto the King's-Bench bar ; where he was arraigned by the name of Connor Macguire, alias Cornelius Macguire, esq. (for his Plea of Peerage was found invalid, and so declared by the court ; and that opinion of the judge was since assented unto, and confirmed by both houses of parliament). At his coming to the bar, the prisoner spake as followeth :

*Macguire.* I do humbly move, that I may have time allowed me by this court to send for my witness.

*Judge.* (Mr. Justice Bacon.) You have had a long time ; you were indicted about the beginning of the last term, you might have prepared witnesses the last term.

*Mac.* I did not expect a trial.

*Judge.* You should expect it at your peril.

*Mac.* I was told, when I came into the kingdom that I might have witnesses.

*Judge.* The proof lies upon the king's part.

*Mac.* Though the proof be of the king's part, yet I must have time to clear myself.

*Judge.* But if every man should ask so much time as you require, he should never come to his trial.

*Serj. Whitfield.* Mr. Justice Bacon, we know that my lord Macguire was indicted here the last term ; he was arraigned at this bar, he pleaded Not Guilty, he could not but expect that he should then have been tried, if it had not been for the plea of peerage which he then put in : upon which he knows there was a deliberate dispute, and he could not tell but that there would be an end before this time ; and if he had any witnesses, he might have sent for them the last term. But it is a very unusual course, especially in that he could not but expect that he should be tried before this time, but then the court did conceive this was a legal information. No place is mentioned by the prisoner where the witnesses should be, nor are they named who they are, nor any particular thing that they should testify ; but the proof lies clear on our part, there is no justification

in treason; if we prove that this lord hath committed treason, there is no justification of that by any witnesses he can produce.

*Judge.* The lord Greye, that was lord-deputy of Ireland, committed his treasons in Ireland, for which he was brought over hither, and tried here; yet the court did not stay for his sending over into Ireland for witnesses.

*Mac.* I desire witnesses.

*Judge.* What can your witnesses say for you? Can they say thus much, That you did not conspire, as this indictment charges you? That there was no taking of these castles? Can they swear in the negative? The proof lies in the affirmative on the king's part.

*Mac.* They may be mis-informed.

*Judge.* Who may be mis-informed?

*Mac.* The court. I have been kept close prisoner a long time, and could not provide my witnesses.

*Serj. Whitfield.* If we were not tied to that, to nothing but his own confession, there is enough to condemn him: for that he says he was kept close prisoner, he might have desired that the last term.

*Serj. Roll.* If we go upon your own examination, the witnesses concurring with that, what can you have?

*Judge.* If you had witnesses here, we would hear them; but to stay upon a mere verbal supposal for those witnesses in Ireland, they may be in that rebellion too, and they will never come hither, and so the matter must never come to a trial.

*Mac.* I desire that it may be the next term.

*Judge.* We cannot protract time; they are the king's witnesses, there are (I suppose) divers here, many witnesses of the king's come out of Ireland; if you will ask them any questions for your defence, you shall. There are many witnesses of the king's that know how things were in Ireland, the court shall put them to speak.

*Mac.* I humbly desire to have a formal trial.

*Judge.* In what respect do you mean? I think it is so now. Now you are come to be arraigned, and the evidence is to come in against you, I conceive it is a formal one.

Then the prisoner was required to hold up his hand at the bar; and it was demanded, if he would challenge any of the jury that were to pass upon him in the matter of life and death.

Then the Jury being called, he looked upon them, and challenged those which did appear, being twenty-three; there being only one absent. Being demanded whether his challenge was peremptory or no? he answered, It was, for causes best known to himself.

Jury challenged.

Sir W. Brownlow, kt.	Edward Rogers, esq.
and baronet.	Edward Claxton, esq.
Sir Henry Row,	Richard Zachary, esq.
Sir M. Howland,	H. Westwood, esq.
Thomas Marsh, esq.	John Jackson, esq.
Thomas Wilcox, esq.	John Pawlett, gent.
William Lane, esq.	Thomas Poltack, gent.

Henry Smith, gent.	John Arnold.
Francis Child, gent.	John Hucksley, esq.
Edward Wilford, gent.	Sir J. Harrington, kt.
Wm. Vincent, gent.	Thomas Moore, esq.
John Barnes.	Henry Arundell, gent.

*Serj. Whitfield.* The prisoner hath challenged all the jury that does appear; twenty-three appear, and he hath challenged them, and his challenge is for causes best known to himself, which is a peremptory challenge. Truly, it is that which the law doth allow, and we do not oppose it; but we do desire that we may have another writ returnable to-morrow.

*Judge.* You must have a Venire Facias.

*Serj. Whitfield.* This cause is a cause of very great weight; there are many witnesses that have long attended in court, we are informed that some of them are gone away into Ireland; that there is the sheriff of Dublin, and some others that are now present in court, that cannot be here, if we should defer this trial, as the prisoner doth desire: and we do desire that it may be referred till to-morrow, we shall be ready to give in evidence against him.

*Judge.* He hath spent three days this term already, this is the fourth: we would have proceeded now, but for his peremptory challenge; but if we stay till to-morrow, he must be content to be tried by a meaner jury.

*Mr. Prynn.* This being a public case, we desire a speedy progress in it: our witnesses have been long detained here and cannot attend till the next term, some of them being to depart within two days.

*Judge.* A public case must have public justice on both sides: for your witnesses, you shall stay your witnesses here. We must do that which the law doth allow.

*Serj. Whitfield.* The law does allow of his peremptory challenge; we desire to have a new writ, and that it may be returnable to-morrow. For the doing of it, we shall leave it to those that are to prosecute it; and to the sheriff. We see that this cause cannot be tried this day, we desire we may have a speedy end of it; there have been many days spent in it, and we that are of counsel for the king do desire that we may confer together, departing the court for some time; and when we have conferred together, we will return to the court, and then we will propound to you what course we do desire for the speedy trial of this cause.

To this motion the judge assented, and *serj. Whitfield* and the rest of the counsel went to consult together about it; and after a short stay, on their return, *serj. Whitfield* spake thus:

*Serj. Whitfield.* We that are counsel for the king have consulted together with the clerk of the crown, and the secretary; we have withdrawn ourselves, and perused several precedents, and we do find by several precedents, that whereas a peremptory challenge shall be, it is in the power of the court to order the course of trial, and the course is this; There goes a writ to the sheriff, that he shall distrain all them that make default, and that he shall remove those that are chal-

lenged by the prisoner; and further, that he return so many more for the trial. This we conceive to be the constant course of this court; and in this case my lord Macguire having challenged 23 of the 24, we are to distrain the other that made default, and to amove the 23 that he hath challenged of them, and have a Tales returnable to-morrow for a new jury.

Serj. *Roll*. That was in Standish's case and Friar's case.

*Judge*. I know the court may grant a Tales; but the matter is, whether it can be done so soon as to-morrow or no, if the sheriff can do it to-morrow.\*

Serj. *Whitfield*. We do find this in the precedent of Friar, that in 3 Hen. 7, the jury did appear on Friday, and all those that did appear were challenged, and there was a Distringas returned the next day, which was Saturday. It may be *immediatè*.

*Judge*. Then make your Distringas against to-morrow morning, make out a Quadringinta Tales against to-morrow.

*Mac*. I desire I may not be so severely dealt with.

*Judge*. It hath been so often-times, and the court doth proceed in these cases *de die in diem*, from day to day; and there is no difficulty in the granting of it, but whether the sheriff can return it so soon. If the king's counsel will have it to-morrow, the other businesses of the court must be put off.

Hereupon the prisoner was discharged, and a rule granted to the lieutenant of the Tower, to bring him again the next day.

On Tuesday, Feb. 11, the lord Macguire was again brought to the King's-Bench bar, where he made a motion that his plea of peerage might be referred to another court. To which was answered,

Serj. *Whitfield*. We know not for what end this motion is, and we know this, that this is no time for my lord to make his request; for you know how far we have proceeded: He hath been arraigned, and indicted for high-treason; and one jury he challenged, the other is returned, so as now he is in the way of his trial; we are now to proceed with such evidence as we have, to prosecute instantly. We do not desire this to be produced again, and if it be, we know not how it could be material one way or other.

After this, the lord Macguire further urged the court to the former purpose; to which it was answered, That he was then brought to his trial as a prisoner upon the indictment, and that both the lords and commons had approved of the opinion of the court therein.

*Mac*. Please you, sir, one word more: I desire to appeal to the lords.

Serj. *Whitfield*. When one is come here, to appeal to the lords, that was never known; now you have put yourself upon the country.

*Mac*. Under favour, I conceive I may, to an higher court.

*Judge*. It cannot be granted, the lords approved it: if you would have gone to an higher court before, you might have taken your course; now the jury is returned, and you are appointed to be tried here.

After this, the lord Macguire desired further to appeal; to which the answer was:

Serj. *Whitfield*. Here lies no such appeal here: you are out of the ecclesiastical court, there is no such plea here: you are now upon the middle of your trial, we desire you may go on; you have challenged 23 of the jury already.

*Judge*. We have no such course in the common law; if a man will appeal from me, I cannot let him appeal to any man.

Upon this, these of the jury following were named, which he challenged; viz. George Hanger, esq., sir Michael Wharton, James Hawley, esq. George Smith, esq., Edmund Besley, esq., William Ewrsby, esq., Stephen Bourman, gent., George Weaver-Basset, J. Nicolls the younger, Henry Walker gent., Randolph Nicoll, Andrew Brent. Upon his challenging of these, which being added to the rest, make 35 in all, the other jury being about to be called, the lord Macguire moved:

*Mac*. Under favour, I conceive that my lands being sequestered, those men that have bought my lands, should not pass upon my trial; and therefore I desire they may make answer to it upon oath, whether any of them have adventured or no.

Serj. *Whitfield*. To desire that a whole jury may be demanded such a question upon their oath, is that that hath not been known. If my lord Macguire have cause now against any, he hath run out the liberty which the law gave him to challenge 35 peremptorily. Now if he should challenge any more, he must make a particular challenge to every particular man that comes to be sworn, and he must have such a challenge notwithstanding as is warrantable by law; but this general challenge is not warrantable by law, and if it were particular, it were not warrantable neither.

Serj. *Roll*. If you will challenge any more, the law does not debar you to shew cause.

*Mac*. I conceive, that any that have given money for Ireland for my destruction, ought not to pass against me.

Serj. *Whitfield*. This is for the king, this is for no particular person whatsoever.

*Mac*. I beseech you hear me in it.

*Judge*. You know this, that the king cannot grant it without the consent of both houses, and in this case it may be put to the jury to try upon their oath. Thus far I shall agree, that if any of this jury be to have any particular benefit in Ireland, of lands or goods by his attainder, it is good; but if his lands come to the king, and that the king is no way bound to give it any of them, it is no challenge: look the statute.

Mr. *Prynne*. Under favour, Mr. Justice Ba-

\* For the law respecting Challenges and Tales, see Blackst. Comm. B. 3, c. 23, B. 4, ch. 27, s. 5, and Mr. Christian's Notes thereon.

con, it doth not appear to the court, that the prisoner hath any lands or goods in Ireland; and therefore no such question is to be demanded of the jury.

*Judge.* You may make needless disputes upon it.

Then the jury being accordingly required to answer upon oath, whether they had adventured, or had any share in Ireland for the rebels land; Macguire desired the question might be, Whether they themselves, their children, or brothers? But that would not be agreed unto, as being unreasonable. Then the jury following was sworn: I. Carpenter, John Cooper, A. Cordall, Rich. Atkinson, Josias Hendall, William Greenwood, William Barnes, Robert Stiles, George Norfolk, Edmund Hudson, John Wait, Esab Risby. The oath which they took was this:

You shall well and truly try, and true deliverance make, between our sovereign lord the king, and Connor Macguire, esq.; now prisoner at the bar, and a true verdict give according to your evidence.

The Jury being sworn, Macguire moved that he might have a Jury of 24; to which it was answered;

*Judge.* There have been 40 named.

*Mac.* Under favour, I conceive, I ought to be tried by 24; there were so many returned at first.

*Judge.* They returned 24; that is, because if any of them did fail, and some may be challenged, then there might be twelve left.

*Mac.* Under favour, I conceive, there should be 24 now left for my trial.

*Judge.* You are deceived in that. You challenged 23, and so there were 40 more added; now you have challenged 12 of this 40, and out of them there remains so many as will make up a Jury of 12.

Then the court proceeded to his trial, and the Indictment against him was read.

*Clerk.* Gentlemen of the Jury, upon this Indictment he hath been arraigned, and to his arraignment he hath pleaded Not Guilty; and thereupon put himself upon his country; and your charge is, to inquire whether he be guilty of the Indictments, or any of them: If you find him not guilty, you are to declare it; if guilty, then you are to give in your Verdict accordingly.

Then these witnesses following were sworn to give in evidence against the prisoner: The lord Blaney, lady Calfield, sir Arthur Loftus, sir John Temple, sir William Stewart, sir Francis Hamilton, sir Edward Borlacey, sir William Cole, sir Charles Coote, Mrs. Wordrose, John Carnick, Walter Gubson, M. Bunbury, captain Michael Balfoure, captain Berisford.

#### Sir William Cole's Testimony.

*Serj. Whitfield.* You know, sir William Cole, a great many of their names, which you have heard, that were conspirators with this lord; what religion were they of?

*Sir W. Cole.* They were all Papists.

*Serj. Whitfield.* Who were they?

*Sir W. Cole.* The lord Macguire, sir Phelim O'Neale, Roger Moore, &c.

*Serj. Whitfield.* Sir Francis Hamilton, upon what occasion was it, that the conspirators got an order to view the magazine?

*Sir F. Hamilton.* I was a member of the house of commons there, and I remember very well there came a message from the house of lords to the house of commons, to let them know, that there was some Plot for the blowing up of the parliament-house in Ireland; and they sent a message, to desire that they might search under the parliament-house: and there was search made, and (as I remember) the lord Macguire was one of the committee from the house of lords made search there; but what they found, I do not know. Afterwards they desired that they might search the castle at Dublin, and other magazines.

*Counsel.* What was the cause?

*Sir F. Hamilton.* There was a coachman of my lord Strafford's, that had uttered some big words, (as was given out) That the parliament house should be blown up: but what was the ground, I am persuaded in my conscience, it was to know where the store and ammunition lay, that they might know where to surprize it.

#### Sir William Stewart's Testimony.

I was one of the committee that was sent by the parliament, and by order from the house of lords, to search the parliament-house, and the lord Macguire was one of the lords: they made a very strict search, and then they inquired for the king's magazine, and I believe my lord Macguire now here was one of the committee that went to search for the house of lords, and he did search very narrowly, and they were desirous to know where the store was.

#### The Lord Blaney's Testimony.

*Counsel.* Whether this search were moved by lord Finghall, and what was the end of it?

*Lord Blaney.* So near as I can, I will give you the business; it is so long ago. This I remember, that there was one of the lords house, whether it were my lord Finghall or my lord Macary, moved it, I cannot certainly depose, but I am sure it was one of them. This occasion was, one of the earl of Strafford's coachmen said, he hoped to see some of the lords blown up for it; it was about a fortnight after the earl of Strafford was beleaded here. Thereupon they got an order for it, and so they went down, and they did not find the powder, but they made as narrow a search as ever any was. I asked what the meaning was of this, for we had strange censures of it ourselves. Says one of them, the lord Clamorris, they are afraid of a Powder-Plot of the Protestants. I answered, that I had heard of a Powder-Plot of the Papists, but never of the Protestants in my life. But if you ask the reason of it, it was to assure themselves of their strength, for we found by woeful experience afterwards it was their end. My lord Borlacey said, Let them not be afraid, for upon my honour there is no powder below. It is a great house, the

house of commons sit on one side, and the lords on the other, and the block-house in the middle.

*Counsel.* What religion is my lord Finghall and my lord Clamorris of?

*Lord Blaney.* The lord Finghall is a Papist, and Clamorris a pestiferous Papist.

*Serj. Whitfield.* All Papists. We shall now read the Examination of the manner of his taking, and then his own Examination. The first we shall read, is this of Mr. Woodcock, that was sheriff of Dublin; he was in town, but he could not stay, but he was examined before this court.

The INFORMATION of John Woodcock the 27th of October, 1644, taken upon Oath before J. Bacon.

The said examine deposes and saith, That he being one of the sheriffs of the said city of Dublin, in the year 1641, having notice given him in the night upon the 22d of October in the same year, of some great design intended, did by virtue of his office walk up and down the city that night; and coming to the house of one Nevil, a chirurgion, in Castle-street, he understood by the said Nevil, that the lord Macguire with some ten or twelve others were there: this examine told him it was fit for his guests to be in bed at that time of night; but the said Nevil did bring this examine word, that the lord Macguire and his company were then going to bed. The said examine departed, setting a watch near his house; by which watch he was informed, that the said lord Macguire and the rest were gone from the house, and were at the house of one Kerne, a taylor: whereupon he searched the said house, and there found some hatchets, with the helves newly cut off close to the hatchets, five petronels, five or six swords, three or four small pistols, five or six skaines, with other arms of the lord Macguire's in an house of office in the said house; in another place divers pole-axes, and also behind a hen-roost some great weapons with sharp pikes of iron in one end of them: the said Kerne affirming, that he knew nothing of any of the particulars before-mentioned, nor how they came in his house. The said examine shewed all the said instruments unto the said lords justices and council of Ireland; and thereupon the said lords justices and council commanded search to be made for the said lord Macguire. Upon which, the said examine searching narrowly for him, at last found him in a cock-loft, with a cloke wrapt about him, standing by a bed, the door locked upon him, there being no key to be found; as also the master of the house flying away, and making an escape to the enemy.

After this the lord Macguire's own examination was read, taken the 26th of March, 1642, (for as sir John Temple declared to the court, the lord Macguire was then brought to the council-board, and they could get nothing out of him) whereupon he was sent back to prison for that time.

The EXAMINATION of Connor Lord Macguire, Baron of Enniskillen, taken before us, Charles Lord Lambert, and sir Robert Meredith, knt. Chancellor of his Majesty's Court of Exchequer, the 26th of March, 1642, by direction of the Right Honourable the Lords Justices and Council.

Who being examined, saith, That about the time when Mr. John Bellew came out of England with the commission for the continuance of the present parliament, Roger Moor, in the said Moor's chamber, in the house of one Peter de Costres of this city, acquainted him this examine, That if the Irish would rise, they might make their own condition, for the regaining of their own lands, and freedom of their religion. At which time the said Moor also acquainted him this examine, That he had spoken with sundry of Leinster, who would be ready for that purpose: and withal told him this examine, that he was assured a good part of Conaught would do the like; and thereupon moved this examine to join likewise with them, with all he could make: unto which motion, he this examine yielded. And the next day following, there was a meeting in his the said Moor's chamber aforesaid, where were colonel Mac Bryan, Macmahone, Tirelagh O'Neal, Philip Mac Hugh O'Rely, this examine, and Roger Moor; where discourse was had on that business, yet nothing concluded on, save that Roger Moor, and the rest should go and prepare their parties. And this examine further saith, That about May last he this examine, Roger Moor, Philip O'Rely, and Roger Macguire this examine's brother, dispatched a priest, one Toole O'Coole, who lived in Leinster, unto Owen O'Neale, into Flanders, to acquaint him with the business concerning the general rebellion then in preparation; which said priest returned about a month before the time appointed for execution thereof. And the answer which the said priest brought from the said Owen O'Neale, was, That he would, within 15 days after the people were up, be with them, with his best assistance and arms. And it being demanded why the said Owen should bring arms, considering that the castle of Dublin was to be taken, with the arms therein; this examine answered, That they so provided for arms, that they might not want any, in case they could not take the said castle, whereof they doubted. And this examine acknowledged, that the castle of Dublin was to have been surprized by himself, capt. Bryan O'Neale, capt. Con O'Neale, capt. Macmahone, one Owen O'Rely, Roger Moor, Hugh Macmahone, col. Plunket, and capt. Fox; and likewise further acknowledged, That Hugh McPhelim, captain Con O'Neale, and Bryan O'Neale, brought from Owen O'Neale, out of Flanders, the very same message which the said priest brought. And this examine further saith, That he was told by Roger Moor, that a great man was in the plot, but he might not name him for the present. And at another

time, and during the sitting of the parliament the last summer, he this examinee was informed by one John Barnwell, a Franciscan friar, then resident in this city, That those of the pale were also privy unto the plot (meaning the present rebellion.) And lastly saith, That of those persons who came to attend him this examinee for the surprize of the said castle of Dublin, only Colonnogh Macguire was privy unto the business in hand; and that the last meeting, when the day appointed for execution thereof was resolved on, was at Lough Rosse, where were present only Ever Macmahone, vicar-general of the diocese of Clogher; Thos. Mac Kearnan, a friar of Dundack; sir Phelim O'Neale, Roger Moor, and Bryan O'Neale.

Concordat cum Originali CH. LAMBERT,  
Ex. per Parl. Harris. RT. MEREDITH.

This being read, and opened unto the jury, being the lord Macguire's free and voluntary confession, which he afterwards acknowledged since his coming to the Tower, viz.

*Memorandum*, That this within written being shewed and read unto the within-named lord Macguire, and himself having perused the same, his lordship did acknowledge the same to be true in all things, saving that he doth not now acknowledge that Bernard told him, That those of the pale were privy to the plot; neither doth acknowledge, that Colonnogh Macguire was privy to the plot before his coming to Dublin.

This examination and acknowledgment was made and taken the 22d day of June, 1642. Anno Regni Caroli regis decimo octavo, before us, John Bramston, Thomas Mallet.—In the presence of John Conyers, William Ayliffe, Nathaniel Finch.

The EXAMINATION of Connor Lord Macguire, Baron of Enniskillen, taken before sir John Bramston, knt. Lord Chief Justice of the King's-Bench, June 21, 1642.

Who saith, that he is of the age of 26 years and upwards, and that he was born in the county of Fermanagh in Ireland; and saith, That his examination taken at Dublin the 26th day of March 1642, before Charles lord Lambert, and sir Robert Meredith, with his acknowledgment thereof the 2d of June before judge Bramston and justice Mallet, is true in such manner as in the said examination and acknowledgment is expressed.

CONNOR MACGUIRE.

The EXAMINATION of Cornelius Macguire, Lord Baron of Enniskillen in Ireland, taken before Isaac Pennington, esq. Lieutenant of the Tower of London, and Laurence Whitaker, esq. two of his Majesty's Justices of the Peace for the County of Middlesex, the first day of October, 1644.

He denieth the receiving of any letters or messages out of England, before the rebellion, nor did he ever hear of any. He saith, he was but a mean instrument in the design in Ire-

land; he confesseth he intended to seize upon the castle of Dublin, and the magazine there, and keep it till they had redress of some grievances, which they purposed to propound to the parliament there; one whereof was, to have a toleration of the Roman Catholic religion. He confesseth, that he came accidentally to Philip O'Rely's house, as he came up to Dublin; and, as he remembereth, Macmahone was then there; and that his intention of coming up to Dublin, was to put the aforesaid design in execution, and that then and there they had speech about that design; but he remembereth not the particulars: which design was to be put in execution the 23d day of October in that year; and that he was taken there that very day, being Saturday, upon search made for him, carried before the lords justices, examined, committed, and sent over into England.

He saith further, That he made his escape out of the Tower of London upon Sunday the 13th of August last about four o'clock in the morning.—Laurence Whitaker, Isaac Pennington.

John Carmick's Testimony.

That upon the 21st of October, 1641, Fergus O'Hlowen, one of the followers of Brian Macguire, esquire, came to his chamber in the castle of Enniskillen; and after he endeavoured to bind him to keep secret a matter of great consequence, which Fergus said he had to disclose, and particularly to conceal it from sir William Cole, and all other Englishmen, this examinee told him, he would be secret so far as it went with his allegiance and conscience. He discovered unto the said examinee, that the lord Macguire and Hugh Oge Macmahone, accompanied with several Irishmen of the counties of Fermanagh and Monaghan, did take their journeys out of the said counties upon the 19th and 20th days of October, 1641, to the city of Dublin, with resolution and intent to murder and kill his highness's lords justices, and council of the kingdom of Ireland, and the rest of the protestants there; and also to possess themselves of the City of Dublin, and to put all the protestants there likewise to the sword: and that to that effect there were other great men, and others of the papists of that kingdom to repair unto, and meet them in Dublin on Saturday, the 23d of Oct. 1641, or thereabouts. And that all the castles, forts, sea-ports and holds that were in the possession of the protestants in the several counties and provinces in the kingdom of Ireland, were then also designed and resolved to be surprized and taken by the Irish papists, and the protestants in every of those castles, forts, sea-ports and holds, to be then also put all to the sword by the Irish papists in Ireland, in their own several parts and limits, by men therunto chiefly and particularly appointed by the contrivers thereof: and that especially the town and castle of Enniskillen, with the rest, would be taken, and all the protestants in it put to the sword; and therefore advised the examinee to get himself and goods out of the town: whereat the examinee smiling,

Fergus bid him not to slight it, for he could assure those things would come to pass in seven days, or else he would be bound to lose his head. Whereupon the said Fergus O'Howen departed, and the examinee acquainting sir William Cole with it, there came one Flartagh Mac-Hugh, a gentleman and freeholder of that county, and admiring to the same effect to sir William Cole, that the plot for surprising the city and castle of Dublin, the castle of Enniskillen, and all the castles and strengths in Ireland, was to be put in full execution by the papists, Oct. 22 and 23, 1641, throughout the said kingdom; and that Brian Mac-Conagh Macguire, esq. did send him the said Flartagh Mac-Hugh to give notice and warning thereof to the said sir William Cole, whom he earnestly desired to be upon his guard upon Friday the 22d and Saturday the 23d of October; for the L. Macguire was gone with Macmahone and others, that week, with purpose to possess themselves of the castle and city of Dublin. And the lord Macguire had written his letters to Con O-Bourke, Owen O-Roreick, Martagh Oge O-Fantagon, and others, to go on with that Plot in those parts; and had appointed his brother Rori Macguire (in his absence) to command the Irish Papists of the county of Fermanagh, for the surprising of the castles and houses of the Protestants. Of all which sir William advertised the lords justices and council of Ireland the same day. And this examinee saith, that captain Mac-Hugh, seven or eight days before the rebellion broke forth, declared, That the lord Macguire posted letters, and rode up and down to divers gentlemen and others of that county, to be very active in the business: That it was averred upon the oaths of Flartagh Mac-Hugh, John Oge Mac-Hugh, and Terlagh Oge Mac-Hugh, before the said sir William Cole, that 150 men were appointed to surprize the castle of Enniskillen, under the leading of Don Macguire and Rori Macguire, who were to murder the said sir William Cole, and his wife, children and servants, and throw them over the wall into the river, and then to do the like unto the Protestants in the town and corporation of Enniskillen: for which service they were not only to have the spoil and riches of the said castle and town, but to have also the barony of Clanawley granted and confirmed in fee to them and their heirs from the said lord Macguire and his heirs. The examinee then also produced a letter written in Irish, from the lord Macguire, to his cousin, Brian Macguire, wherein taking notice that he was abundantly inclined to the English, which did very much trouble him; and therefore desired him to banish such thoughts out of his mind, and not to pursue those resolutions which in the end might be his own destruction, as he thought it would be to all those that did not appear.

Presently after, upon the 29th of October, one captain Rori-Macguire took upon him the managing of all businesses in his absence; he fortified first the Castle-Husen, the house where-

in he dwelt himself, he took in the castle of one Edward Aldrith, esq. he put out all the English there; he went to the town, burnt that, but killed none of the men; went thence to another place, and hanged one Eleazer M. one that was clerk of the peace of the county; and from thence he went to Newton, four miles off from it, took in the town, stripped and disarmed all the Protestants that were in the church, the next day after marched away, and killed and destroyed most of the English in those parts; murdered Arthur Champion, esq. and many more. Two and twenty castles were seized upon, and the church of Monah, with eighteen Protestants burnt in it: Seven hundred ninety-four Protestants were destroyed in that county; and I did hear there was about one hundred and fifty-two thousand, that they had destroyed in that province of Ulster, in the first four months of the rebellion.

JOHN CARMICK.

Then sir William Cole, being present in court, gave in his evidence much to the same effect as in Carmick's Testimony.

Serj. W. We desire to shorten, we have a great many witnesses; we shall go upon these particulars: 1. Captain O'Neale's landing in Ireland, and what he brought with him. 2. Guilo and Crocan. Lastly, how long besieged, and how many murdered.

Then sir William Stewart gave in testimony to this effect.

That Con Owen O'Neale landed in July the same year the rebellion began, brought many commanders, much arms and ammunition; many of his commanders, nine of the chief of them, were taken prisoners at one battle.

Serj. W. It is his own confession; that he sent a priest over to fetch arms to come into Ireland.

Then the lady Calfield was desired to declare her knowledge concerning the taking of Charlemont-castle.

Lady Calfield. The 23d of October 1641, Sir Phelim O'Neale and others came into the castle, they seized upon all, murdered his servants; and those that were alive, they bound them, and put them in prison; and at that time sir Phelim O'Neale himself, and other of this companions, told her, That Dublin castle and city, and most other forts of Ireland were surprized by their confederates the Papists; and that he was sorry for his cousin the lord Macguire, and that he was afraid he was taken.

Serj. W. What was done with my lord Calfield?

Lady Calfield. He was murdered; he begged for his life, and they durst not but do it.

Serj. W. When sir Phelim O'Neale had taken my lord Calfield, then they got this lady to write to the Lords/Justices, that my lord Macguire might be exchanged for her son, but that would not be; and thereupon they murdered my lord Calfield, Francis Davis, and others.

*Mrs. Mary Wardrofe's Testimony.*

That he came on Friday night about 10 or 11 o'clock to break into the castle: I hearing the noise asked what was the matter? I went to call up some of our gentlemen; when I came in again, they had taken some of our gentlemen and bound them.

She also testified the murdering of the lord Calfeild, Francis Davis, and others; and the former words concerning my lord Macguire.

Serj. W. These two witnesses prove that of Charlemont, how far the rebels owned the lord Macguire, as to endeavour his exchange. We shall now come to the other castles, how long they besieged them, and who was murdered.

*Walter Gibson's Testimony.*

They besieged it a quarter of a year before they took it; divers of the chief conspirators, and Powell and Cosens took the castle by force in an hostile manner.

*Sir Francis Hamilton's Testimony.*

Philip O'Relly came to the castle, to Guilo and Crocan castles, and they lay before it a quarter of a year with 2,000 or 3,000 men, sometimes 1,500, but never less.

*Sir Charles Coote's Testimony concerning the Generality of the Rebellion.*

Sir Phelim O'Neale and Roger Moore were the actors in the massacres, and by public directions of some in place, and of the titular bishops, for the sending of an exact account of what persons were murdered throughout all Ulster, a fourth part of the kingdom of Ireland, to the parish-priests in every parish; and they sent in a particular account of it; and the account was 104,700 in one province, in the first 3 months of the rebellion.

Serj. W. What say you concerning the General Council and the Pope's Bull?

Sir Charles Coote. The Supreme Council, they took up a new form of government upon them of their own; and by this authority it was granted to the lady Macguire, that she should have the rent of such lands in recompence of the loss that he was at in their causes. They have made several judges of their own courts: They print, they coin, they do all in their own names.

*The Copy of the POPE'S BULL.**Ad futuram Rei Memoriam.*

Urbanus Octavus, &c. Having taken into our serious consideration the great zeal of the Irish towards the propagating of the Catholic faith, and the piety of the Catholic warriors in the several armies of that kingdom, which was for that singular fervency in the true worship of God, and notable care had formerly in the like case, by the inhabitants thereof, for the maintenance and preservation of the same Orthodox faith, called of old, 'The Land of Saints;' and having got certain notice how, in imitation of their godly and worthy ancestors, they endeavour by force of arms to deliver their

thrall'd nation from the oppressions and grievous injuries of the heretics, wherewith this long time it hath been afflicted, and heavily burdened, and gallantly do in them what lieth to extirpate, and totally root out those workers of iniquity, who in the kingdom of Ireland had infected, and always striving to infect the mass of Catholic purity with the pestiferous leaven of their heretical contagion: We therefore being willing to cherish them with the gifts of those spiritual graces, wherof by God we are ordained the only disposers on earth, by the mercy of the same Almighty God, trusting in the authority of the blessed apostles Peter and Paul; and by virtue of that power of binding and loosing of souls, which God was pleased, without our deserving, to confer upon us; to all and every one of the faithful Christians in the foresaid kingdom of Ireland now, and for the time militating against the heretics, and other enemies of the Catholic faith, they being truly and sincerely penitent, after confession, and the spiritual refreshing of themselves with the sacred communion of the body and blood of Christ, do grant a full and plenary indulgence, and absolute remission for all their sins, and such as in the holy time of jubilee is usual to be granted to those that devoutly visit a certain number of privileged churches, within and without the walls of our city of Rome: by the tenour of which present letters, for once only and no more, we freely bestow the favour of this absolution upon all and every one of them; and withal, desiring heartily all the faithful in Christ, now in arms as aforesaid, to be partakers of this most precious treasure.

To all and every one of these foresaid faithful Christians, we grant license, and give power to chuse into themselves, for this effect, any fit confessor, whether a secular priest, or a regular of some order; as likewise any other selected person approved of by the ordinary of the place; who, after a diligent hearing of their confession, shall have power to liberate and absolve them from excommunication, suspension, and all other ecclesiastical sentences and censures by whomsoever, or for what cause soever, pronounced, or inflicted upon them; as also from all sins, trespasses, transgressions, crimes and delinquencies, how heinous and atrocious soever they be, not omitting those very enormities in the most peculiar cases, which by any whatsoever former constitutions of ours, or of our predecessor popes, than which we will have these to be no less valued in every point, were designed to be reserved to the ordinary, or to the Apostolic see; from all which the confessor shall hereby have power granted him to absolve the foresaid Catholics at the bar of conscience, and in that sense only. And furthermore, we give them power to exchange what vow or vows soever they were formerly astricted to, those of religion and chastity excepted, into any other pious and good work or works, imposed or to be imposed on them, and every one of them to perform in all the aforesaid cases, by whole-

some penance, according to the mind and will of the confessor.

Therefore, by the tenor of these present letters, and by the virtue of that holy strict obedience, wherein all Christians are bound unto us, we charge and command all and every one of the reverend brethren, archbishops, bishops, and other ecclesiastical prelates, and whatsoever ordinaries of places now residing in Ireland, together with all vicars, substitutes and officials under them; or these failing, we command all such to whom in those places the care of souls is incumbent: that as soon as they shall have received the copies of these our letters, they shall forthwith, without any stop or delay, publish them, and cause them to be published throughout all their churches, diocesses, provinces, countries, cities, towns, lands, villages, and places whatsoever.

Nevertheless we do not intend by these present letters, where any public or secret irregularity is made known, or any defection, apostacy, incapacity or inability in any manner or way contracted, to dispence therewith, or grant to any other any power or faculty of dispensation, rehabilitation, or restoring the delinquent to his former condition, though but at the bar of conscience: Neither can nor should these our present letters avail or be steadable to those, who by us and the Apostolic see, or by any prelate or ecclesiastic judge, have been excommunicated, suspended, interdicted, or declared, and publicly denounced to have justly incurred the sentences and censures of the church, till first they have satisfied and agreed with the parties therein concerned, notwithstanding all other constitutions and apostolical ordinations; whereby, nevertheless, the faculty of absolution in these, as well as other expressed cases, is so reserved to his holiness the pope for the time being, that no kind of jubilee, nor power of granting such indulgences can in any sort avail, unless express mention be made of the fault or faults in particular, and the whole tenour of them fully deduced by an individual relation from word to word, and not by general clauses importing the same thing. This, or some other requisite form of the like nature, being carefully observed, we in that case especially, expressly and namely, by the effect of these presents, do totally abolish and remit them all and every one of them their offences, notwithstanding any thing to the contrary.

Now that these principal letters of ours, which cannot be conveniently brought to every place, may the sooner come to the notice of all, our will and pleasure is, that any whatsoever copies of transcripts, whether written or printed, that are subscribed by the hand of a public notary, and which have the seal of some eminent person in ecclesiastical dignity affixed thereunto, be of the same force, power and authority, and have the like credit in every respect given unto them, as would be to these our principal letters if they were shewn and exhibited.

Dated at Rome in the Vatican, or St. Peter's palace, the 25th of May, 1643, and in the 20th year of our pontificat. M. A. MARAUDUS.

Serj. *Whitf.* We have troubled you with a long relation of the actions of the confederates with the lord Macguire, though not done in his own person, and his own particular act; but for this that was done by the generality, I heard my lord say at the bar, What's that to me? Yes, my lord, this is to you; you were one of the conspirators in the first Plot, and you contrived the business. And that had been treason alone, to send the priest to fetch Owen O'Neale into Ireland with arms and soldiers; but you contrived this, and conspired it, and you are as guilty in law, in all these cruel murders and burnings in every place: for the law of England is, in treason you are all principals and no accessories. Your son was there, your lady is rewarded; for the Supreme Council they have taken care of you: why! because you were one of the first complotters of it; and this will light upon you, and fall very heavy. And for your exchange, it was propounded for the lord Calfield; but when they could not have that agreed upon, then what becomes of the poor lord Calfield? murdered too! And you see what encouragement you have from the complotters, and from the Devil too; for they were both together in it. And now you have seen the indictment fully made good.

Then the lord Macguire proceeded to make his Defence, wherein he first of all denied his Examination, although testified, as before, by so many credible witnesses, and said, that he knew no such Examination.

That at the time of his apprehension at Dublin, he came about his own particular occasions, as his estate was in danger, if he did not follow it; that because he was found about the city, he was therefore apprehended; that his lodging was not within the city, but he lodged without the city; that he did lodge at Mr. Nevil's house formerly, but not at this time; that for some of the places mentioned, where he should be about the conspiracy, he had not been there a year before, he was certain of it. For the number of Protestants that were mentioned to be slain, he said he did not think there were so many Protestants in the whole kingdom; that he was continually either at his own house, or at Dublin, and knew nothing of the plot, but by hear-say.

*Judge.* You confess in your examination, when the day was for the rising, that you were in the conspiracy, and appointed for the taking of Dublin Castle; and that you were taken when you came about it: also you rode about it, and provided arms.

*Macg.* I was in the house in the cock-loft where I was taken; I did not know where any army was.

Serj. *Whitfield.* My lord Macguire does forget himself, what he acknowledges under his own hand.

Then the examination being shewed him, he said, There's my name, but not my hand.

*Judge.* I am sorry to hear it: I did rather expect that you should have acknowledged it: here are two able witnesses that can testify it against you; your denying your own hand, which is so manifestly proved, will be a great discredit to what you say: you acknowledged it at two several times.

*Macg.* What did I acknowledge?

*Judge.* You say that you came to Dublin to settle your estate: by your own examination you acknowledged, That the castle of Dublin was to be surprized by yourself. But it is now time we should draw to the jury: you hear my lord Brampton and my brother Finch here justify it to you.

Then my lord Macguire's examination was shewed to my lord Blaney, being present in court, demanding whether he thought it to be Macguire's hand, or no?

*Lord Blaney.* It is my lord's own hand, he hath written to me many letters.

*Macg.* I don't think I have written many letters to your lordship.

*Judge.* Gentlemen of the Jury, you may go to the business; if there were nothing that you see in this case, but what is in the examination, if you believe it to be his, his confession does acknowledge it: you hear this by the testimony of my lord Brampton and my brother Finch expressly, who were present when he did acknowledge it, and set his hand to it; and yet you see, though it is here proved by my lord Blaney, he denies it. If you find this to be true, here is treason enough, and too much too; for he does here confess, that Roger Moore did acquaint him, that if the Irish did rise, they might make their own conditions for regaining their lands: and he acquainted him, that he had spoken with sundry in Leinster, that would be ready for that purpose; and that a great part of Connaught would do the like: and then moved him (this lord) the prisoner at the bar, to join likewise with him, which he did; so then was the plot. The next day they met; he goes to Moore's chamber again, where colonel Mac Brian, Mac Mahone and others had discourse again about it. Then he says, that they did send over to Owen O'Neale, to acquaint him concerning the general rebellion in Ireland, then in preparation. He confesses expressly, that being demanded why the said Owen should bring over arms, seeing the castle of Dublin was to be surprized? He answered, that they so provided arms, that they might not want any thing, if they should not take it, whereof they doubted. And then you have him acknowledging, that the castle of Dublin was to be surprized by himself, and captain Brian O'Neale, and others. These words shew here expressly, that the day whereon the execution was appointed, by the lord Macguire's own confession, he was come to Dublin for the surprize of the castle. So that it is apparent, that he was about this plot expressly. If this be true, that you did conspire to make war or rebellion within that kingdom, though you were taken yourself before it was executed, yet it

was your own conspiracy: and besides, endeavouring after that to bring it to perfection by sending over for arms; all these do discover your own intention to execute it.

*Mac.* I confess it not, I refer myself to the jury.

*Judge.* Gentlemen, you are to know, that to conspire to raise a war, if any of that conspiracy do act it, as you see here sir Phelim O'Neale did, if you observe the testimony of my lady Calfield, he came and surprized the castle of Charlemont, and then it was given out, that my lord Macguire had taken Dublin; so that though it did not take effect, that which is done by any, is testimony enough. Go together and consider of it.

Upon this the jury went together, and staying a short space, returned their verdict, which was, that they found him Guilty of all the treasons according to the indictment.

*Clerk.* Connor Macguire alias Cornelius Macguire, thou hast been indicted for several high treasons, and thou hast been arraigned. Upon the arraignment thou hast pleaded, Not Guilty; and for thy trial hast put thyself upon the country, which country have found thee guilty, according to the indictment: therefore prepare thyself to receive the sentence.

*Macg.* I desire to know by what law?

*Judge.* The law is well enough known: that is a treason within the statute without doubt.

*Macg.* I was not tried by my peers.

*Judge.* This is a general exception, formerly annexed in your plea: if you can shew some particular cause also, you shall be heard.

*Macg.* I desire counsel to advise me.

*Judge.* When you did put in a plea therein, you had counsel to advise you in your plea, and to argue it: now your time is past for counsel; you must have none assigned to pick holes in the indictment.

*Macg.* I desire the court would consider of it before they proceed to sentence.

*Judge.* You offer nothing to the court that is of any difficulty: you had counsel whether you should be tried by your peers, or the jury here; which jury are to try any man under a nobleman in this kingdom.

*Macg.* I desire to know under what seal you thus proceed against me; for I think you sit here by the new seal.

*Judge.* What seal do you mean? I sit here by virtue of the old, by order of parliament.

*Macg.* Under favour, I conceive that the ordinance of parliament for the new seal, makes all done by the old seal to be void.

*Judge.* Here is nothing done but by good authority and the parliament's approbation.

*Macg.* I conceive the ordinance for the new seal cuts off all proceedings of the old.

*Judge.* My authority is not cut off: I was made by the old seal before there was any new seal, and so I am continued by the parliament; and the parliament did take notice that I have been allowed to sit. Besides this, there is nothing done in this court by the new seal:

the sheriffs are here by a charter, and that comes in from year to year; and there is no seal in order of execution.

*Judge.* Well, if you have nothing to say for yourself, I am to pronounce sentence, as I am a minister of justice. You have been indicted here for several treasons contained in your indictment, as was here of late read unto you; and you have had a fair proceeding, and very deliberately: for your indictment came in about Allhallowmas last, three weeks or a month before the end of the last term, three weeks at least. You then made a question, Whether you ought to be tried by your peers in Ireland, or a jury here? The court did so far deliberate in it, as to allow you counsel to plead with the best advantage you could: and afterwards, this term there have been two arguments at the bar on each side, where hath been said as much for you as can be. The court over-ruled that, and so you are tried by a jury; and you had the liberty to challenge them, and had all the advantages that the law will afford, and take all the exceptions you could. Truly for my part, I see that there is not any one of them for me, to sway the judgment: the treason and the offences that you are charged withal are very heinous, your crimes very impious; great destruction hath followed upon your plot, which the jury have found you guilty of. What a mighty cruel war and great devastation in that kingdom? Most horrid to speak or rehearse! It is fitter for you now to bethink yourself what your offences are, and prepare yourself for death, rather than seek to mask or put colours upon those things which are so manifestly proved to all the world. And now you are found guilty: and therefore there is no contradiction or gain-saying will avail you: you ought to repent, and pray to God to forgive that offence whereof you are guilty. The judgment that I am by the law to pronounce against you, is this: Connor Macguire, esq. you being found guilty of the treasons whereof you are indicted, your judgment is, That you shall be carried from hence to the place from whence you came, that is the Tower, and from thence to Tyburn, the place of execution; and there you shall be hanged by the neck, and cut down alive, your bowels taken out, and burnt before your face, your head to be cut off, your body to be divided into four quarters, and the head of your body to be set up and disposed of as the state shall appoint. And the Lord have mercy upon your soul.

After judgment pronounced, the king's counsel demanded of him whether he would have any ministers come to him, to prepare him for his end, and to advise him for the good of his soul.

*Macg.* I desire none of them: but I desire I may be sent prisoner to Newgate.

*Council.* His reason is, because there are some popish priests there.

*Judge.* That cannot be: your judgment is to return to the Tower; where you may have ministers, if you please, to return to advise you for your soul.

*Macg.* I desire that some gentlemen of my own religion may have access to me, to confer with me; and some who are my fellow-prisoners in the Tower, to speak with me in my keeper's presence.

*Judge.* You must name somebody in particular.

*Macg.* I desire to confer with Mr. Walter Montague. [Belike he knew him to be a popish priest or Jesuit.]

*Judge.* You must prepare yourself to die against Saturday next.

*Macg.* I desire a fortnight's time to prepare myself.

*Judge.* That is too long a space, and I cannot grant it; but you shall have convenient time.

*Macg.* I desire you that I may have three days notice at least to prepare myself.

*Judge.* You shall have three days warning; but however delay no time to prepare yourself.

*Macg.* I desire my execution may be altered, and not according to the judgment: and that I may not be hanged, and quartered.

*Judge.* This lies not in my power to grant: but here are some members of the house of commons in court, and you were best address yourself to them, that they may acquaint the house with your desires.

*Macg.* I shall desire the gentlemen of the house of commons, so many as are here, to move the house in my behalf, that I may have a fortnight's time to prepare myself, and that the manner of my execution may be changed.

*Sir John Claiworthy.* My Lord, I have been your school-fellow heretofore, and I have found some ingenuity in you; and I have seen some letters of yours importing some remorse of conscience in you for this fact; and I should be glad to discern the like ingenuity in you still: and shall move the house that you may have some ministers appointed to come to you; and likewise acquaint them with your other desires.

Then the prisoner departing from the bar, Mr. Prynne advising him to confer with some godly ministers for the good and comfort of his soul; he answered, That he would have none at all, unless he might have some Romish priests of his own religion.

To which Mr. Prynne replied, My lord, these Romish priests are the chief instruments who have advised you to plot and perpetrate those execrable treasons, for which you are now condemned, and have brought upon you that shameful judgment of a traitor, the execution whereof you even now so earnestly deprecated. Since then they have proved such evil destructive counsellors to you in your life, you have great reason to disclaim them with their bloody religion, and to seek out better advisers for you at your death, lest you eternally lose your soul as well as your life, for the blood of those many thousand innocents which have been shed by your means.—To which he, pausing a little, answered, That he was resolved in his way. Whereupon another lawyer said, My lord, you were best to hear both sides. To which he

answered in an obstinate manner, I am settled on one side already, and therefore I desire not to confer with any other. And so departed through the hall towards the Tower, the people crowding and running about to behold his person.

After the Sentence pronounced against the lord Macguire, as before said, he petitioned the Parliament as followeth:

“To the Right Honourable the Commons now assembled in Parliament, the humble Petition of the Lord Macguire;

“Humbly sheweth; That your petitioner stands condemned for his life, and adjudged to be drawn, hanged, and quartered: the performance whereof (he humbly conceives) in some more favourable manner, will be satisfactory to justice. And forasmuch as your petitioner hath hitherto enjoyed the degree and dignity of a lord, which he humbly conceives your honours are well acquainted with: In tender consideration whereof, he desireth that your honours will graciously be pleased in mercy to mitigate the rigour of his sentence, and turn it to that degree which most befits the denomination he hath: and as he hath been looked on by the eye of justice in his condemnation, so in this particular he may be pitied, and have mercy. And he shall ever pray, &c. CORNELIUS MACGUIRE.”

But this Petition was rejected by the parliament, and on Thursday, February the 20th, he was drawn on a sledge from the Tower through London, and so to Tyburn: where being removed into a cart, he kneeled and prayed a-while: after which, sheriff Gibbs spake to him, representing the heinousness of his crime, and the vast numbers who had been murdered by that Conspiracy, for which he was to suffer, and therefore exhorted him to express his sorrow for it; in answer to which he said, ‘I desire Almighty God to forgive me my sins.’

*Sheriff Gibbs.* Do you believe you did well in those wicked actions?

*Macg.* I have but a short time, do not trouble me.

*Sher.* Sir, it is but just I should trouble you, that you may not be troubled for ever.

*Macg.* I beseech you, Sir, trouble me not, I have but a little time to spend.

*Sher.* Sir, I shall give you as much time after as you shall spend to give satisfaction to the people: I do require you, as an instrument set in God’s stead here, to make an acknowledgment to the people, whether you are sorry for what you have done or no, whether it be good or no.

*Macg.* I beseech you do not trouble me, I am not disposed to give you an account. Pray give me leave to pray.

*Dr. Sibbald.* Give glory to God, that your soul may not be presented to God with the blood of so many thousand people.

*Sher.* You are either to go to heaven or hell. If you make not an ingenuous con-

fession, your case is desperate; had you any commission, or no?

*Macg.* I tell you that there was no commission, that ever I saw.

*Sher.* Who were actors or plotters with you; or who gave you any commission?

*Macg.* For God’s sake give me leave to depart in peace.

Then they asked him, ‘If he had not some pardon or bull from the pope for what he did?’ To which he only answered, ‘I am not of the same religion with you.’ And being further urged about a Bull or pardon, said, ‘I saw none of it: all that I knew, I delivered in my examinations: all that I said in my examinations are true; all that I said, is right. I beseech you let me depart in peace.’ And so not returning them any answer to their question, he continued mumbling over a paper, which he had in his hand, as he had done from his first coming. The Sheriffs commanded his pockets to be searched, whether he had no bull or pardon about him; but they found in his pockets only some beads and a crucifix, which were taken from him. And then Dr. Sibbald said to him, Come, my lord, leave these, and acknowledge your offence to God, and the world; one drop of the blood of Jesus Christ is able to purge away all the heavy load of blood that is upon you: it is not your Ave Maria’s, nor these things, will do you any good; but it is ‘Agnus Dei qui tollit peccata mundi.’ The lord Macguire seemed not to regard his discourse, but read out of his Paper to the people as followeth.

“Since I am here to die, I desire to depart with a quiet mind, and with the marks of a good Christian; that is, asking forgiveness first of God, and next of the world. And I do forgive (from the bottom of my heart) all my enemies and offenders, even those that have an hand in my death. I die a Roman Catholic, and although I have been a great sinner, yet am I now by God’s grace heartily sorry for all my sins; and I do most confidently trust to be saved (not by my own works, but only) by the passion, merits and mercy of my dear Saviour Jesus Christ, into whose hand I commend my soul.” And then added, “I beseech you, gentlemen, let me have a little time to say my prayers.”

*Sher.* Sir, If you answer ingenuously to these questions we shall ask you, you shall have time afterwards: whether do you account the shedding of the Protestant blood to be a sin, or not: and whether do you desire pardon of God for that sin?

*Macg.* I do desire pardon of God for all my sins: I cannot resolve you in any thing for my part.

*Sher.* You can tell what your conscience dictates to you: do you think it was a sin, or not?

*Macg.* For my part I cannot determine it.

*Sher.* Then now it seems nothing to you to kill so many.

*Macg.* How do you mean killing of them?

To tell you my mind directly, for the killing I do not know that, but I think the Irish had a just cause for their war.

*Sher.* Was there any assault made upon you? Had you not entered into a covenant? Had you not engaged by oath yourself to the king?

*Macg.* For Jesus Christ sake, I beseech you to give me a little time to prepare myself.

*Sher.* Have pity upon your own soul.

*Macg.* For God's sake have pity upon me, and let me say my prayers.

*Sher.* I say the like to you, in relation to your own soul; whether you think the massacre of so many thousand Protestants was a good act? For Jesus Christ's sake, have pity upon your own soul.

*Macg.* Pray let me have a little time to say my prayers.—All this while his eye was mostly upon his papers, mumbling over something out of them to himself. Whereupon one of the sheriffs demanded those papers of him. He flung them down; they were taken up and given to the sheriff. They asked him farther, Whether they were not some agreement with the recusants here in England? Whereunto he answered, I take it upon my death, I do not know that any man knew of it; and after some other such-like talk, the sheriff bidding him prepare for death, he said, I do beseech all the Catholics that are here to pray for me. I beseech God to have mercy upon my soul.—And so was executed.

**The ARGUMENT of WILLIAM PRYNN, of Lincoln's-Inn, esq. Hil. 20 CAR. I. Banc. Regis, in the Case of the Lord CONNOR MACGUIRE, Baron of Ineskellin in Ireland, (the chief Contriver of the late Irish Rebellion and Massacre of the Protestant English) against whom he was assigned Counsel by both Houses of Parliament.**

This Argument was published by Prynn himself, in a Pamphlet having this Title:

The Subjection of all Traitors, Rebels, as well Peers, as Commoners in Ireland, to the Laws, Statutes and Trials by Juries, of good and lawful Men of England, in the King's-Bench, at Westminster, for Treasons perpetrated by them in Ireland, or any foreign Country out of the Realm of England.

#### BEING

An Argument at Law made in the Court of King's-Bench, Hil. 20 Caroli Regis, in the Case of Connor Macguire, an Irish Baron (a principal Contriver of the last Irish Rebellion): Fully proving, That Irish Peers, as well as Commons, may be lawfully tried in this Court in England, by the Statute of 35 H. 8. c. 2, for Treasons committed by them in Ireland, by a Middlesex Jury, and outed of a Trial by Irish Peers: Which was accordingly adjudged, and he thereupon tried, condemned, and executed as a Traitor. Wherein are comprised many other particulars and notable Records, relating to the Laws, Peers, Statutes and Affairs of Ireland, not obvious in our Law Books, and worthy public knowledge.

By WM. PRYNN, esq.

A Benchet of Lincoln's Inn.

Numbers, xxxv. 31, 33.

“Ye shall take no satisfaction for the life of a murderer, which is guilty of death, but he shall be surely put to death. So ye shall not pollute the land wherein you are; for blood defileth the land, and the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it.”

London:

Printed by J. Leach, for the Author, 1658.

VOL. IV.

Immediately after the Title Page, followed a Preface or Dedication, which seems to merit insertion in this place. It illustrates the temper of its author, and the history of the time; and it furnishes an additional proof of Prynn's industry, learning, and sagacity:

#### TO THE

Ingenuous Readers, especially Professors, Students of the Laws of England and Ireland.

HAVING lately published a much enlarged edition of my plea for the lords and house of peers, wherein the undoubted ancient birth-right of all English lords and barons to sit, vote, and judge in all parliaments of England, and their trial by their peers, is irrefragably vindicated by histories and records in all ages, and larger discoveries made of the proceedings and judicature in our parliaments in cases as well of commoners, as peers, than in all former treatises whatsoever; I apprehended it neither unseasonable, nor unprofitable to publish this argument at law, concerning the trial of Irish peers for foreign treasons acted by them, made by me near 14 years past in the King's-bench court at Westminster, in the case of Connor Macguire an Irish baron, there indicted for high treason, in having a principal hand in the late bloody rebellion in Ireland; against whom I was, by special order, assigned counsel, among others, by the parliament then sitting; upon whose plea, and a demurrer thereunto, I first argued this new point in law, never formerly disputed, adjudged in open court; Whether an Irish peer, or commoner, committing treason in Ireland, sent over from thence into England against his will, might be lawfully tried for it in the King's-bench at Westminster by a Middlesex jury, and outed of his trial by Irish peers, of his condition, by the statute of 35 H. 8. c. 2? After two solemn arguments at the bar, by myself, and serj. Rolles against, and Mr. Hales, and Mr. Twisden for the prisoner, and

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Mr. Justice Bacon's argument on the bench, his plea was over-ruled, adjudged against him; it being resolved, he might and ought to be tried only by a jury of Middlesex, not by his peers of Ireland: Whereupon he pleading, Not Guilty, to his indictment, was tried by a substantial jury, to whom he took both his peremptory and legal challenges, which the court allowed him of right, and after a very fair and full trial was found guilty by the jury, upon most pregnant evidence; and then condemned, executed as a traitor at Tyburn, as he well demerited.

The reasons inducing me to publish this argument were:

1. The near affinity and cognation it hath with my plea for the lords.

2. The novelty, rarity of the subject and points debated in it, not formerly discussed at large in our law-books.

3. The generality and public concernment thereof, extending to all Irish subjects, whether peers or commons, and so worthy their knowledge, perusal, and of all public officers in Ireland, especially lawyers.

4. The prevention of mis-reports of this case and argument, in this age, wherein many arguments at law, and reports of cases have been lately published by injudicious hands, mistaking, mangling, or misreciting the reasons, records, law-books cited both at bar and bench, and sometimes the cases, judgments themselves; to the prejudice, seduction of young students of the law, and scandal of the law itself.

5. The importunity of some friends who formerly desired copies thereof from me, when I had no leisure to furnish them therewith.

6. The vindication, declaration both of the parliaments and King's-bench honourable, respectful, equal, untainted justice against this arch-Irish-Traitor and rebel, and that in these particulars;

1st. In trying this notorious offender, guilty of the horriddest, universallest treason and rebellion that ever brake forth in Ireland; and that in a time of open war both in Ireland and England, only by a legal indictment, and indifferent sworn jury of honest and lawful freeholders, according to the known laws and statutes of the realm; not in a court martial, or any other new-minted judicature, by an arbitrary, summary, illegal or martial proceeding, without any lawful presentment, indictment or trial by a sworn, impartial, able jury, resolved, to be diametrically contrary to the fundamental laws, customs, great charters, statutes of the realm, and inherent liberty of the subject, especially in time of peace when all other courts of justice are open, and of very dangerous consequence, and thereupon especially prohibited, enacted against: as you may read at leisure in the statute of 5 R. 2, par. 1, ch. 5, rot. par. n. 57, 2 R. 2, rot. par. n. 57, 1 H. 4, rot. par. n. 44, 2 H. 4, rot. par. n. 89. The votes of the house of commons and lords against it, May 7, 1628, the Petition of Right, 3 Caroli, Mr. Camden's Annals of qu. Elizabeth, p. 242,

243, Coke's 3 Inst. p. 52, 124, and accordingly declared by the commons house in their Remonstrance of the State of the Kingdom, (a) 15 Dec. 1641, and by the whole parliament, and most now in power, in the case of the lord Mount-Norris; whose trial and capital condemnation in a court martial in Ireland by martial law, in time of peace, without a lawful indictment and trial by his peers, in a summary way, by the earl of Strafford's power, then lord deputy of Ireland, was one of the principal charges, (b) evidences against him, to make good his general impeachment of High-Treason, for which he was condemned and beheaded on Tower-hill for a traitor, by judgment and act of parliament; Namely, That he had traitorously endeavoured to subvert the fundamental laws and government of the realm, and instead thereof to introduce an arbitrary and tyrannical government against law; though this lord was not executed or put to death by that sentence against him; Which if executed, had been wilful murder both in his judges and executioners, as sir Edward Coke resolves in his 3 Institutes, p. 52, 121, printed by the house of commons special order; and king Alfred long before him, who hanged up no fewer than 44 of his justices in one year as murderers, for condemning and executing some of his subjects, without a sworn jury of 12 men; and others of them for offences not capital by the known laws, or without pregnant evidence: as Andrew Horn records in his Myrrour des Justices; ch. 5, p. 296, 297, 298; who thence infers; "Abusion est, de la commun ley, que justices et lour ministers que occient la gent per faux jugement, ne sont destruits al foer de autres homicides, que fit le roy Alfred, que fist pendre 44 justices en un an, tant come homicides pur lour faux judgments," which others guilty of the like crimes (especially since these antient and Straffords, Caunterburys, with the Ship-money-judges, late precedents, impeachments, sentences, to the prejudice of the subject's lives, estates,) may do well to ruminate upon.

2dly, In assigning this arch-traitor such learned counsel as he desired, to advise and plead for him in this case of high-treason in all matters of law arising therein; which the parliament likewise allowed to Strafford and Canterbury, though impeached of high-treason: and therefore cannot in point of justice (c) be denied to any other person or persons in like cases, if desired.

3dly, In admitting him free liberty to put in a plea in writing to the manner of his trial, and to the Jurisdiction of the King's Bench itself (though the highest court of justice (d) in all England but the parliament, and having lawful consueance of all sorts of treasons whatsoever) and not peremptorily over-ruling, rejecting it

(a) An exact Collection, p. 8.

(b) See Strafford's Impeachment and Trial.

(c) 2 Stamf. l. 2. c. 63. 1 H. 7, f. 23.

(d) Coke's 4 Instit. c. 6.

forthwith, and giving Judgment against him *pro confesso*, or as (e) standing mute, for not submitting to its jurisdiction, and a trial by an ordinary Middlesex jury, being a matter of law and right; but permitting, yea ordering his plea upon a demurrer thereunto, to be publicly argued *pro et contra* at the bar by counsel, and then solemnly argued at the bench by the judge, before it was over-ruled, being a case of general concernment to satisfy him and all the world of the legality and justice of his trial. And then permitting him according to law, to plead not guilty, and put himself upon his trial by his country; not sentencing him to death for treason without any trial or good evidence produced to convict him.

4thly, In allowing him a free honourable trial upon an Indictment, first found upon oath by the grand jury, and then suffering him to take not only his particular challenges by the poll to every of the jurors returned, upon a *voyre dire* (not formerly heard of, yet allowed him, as reasonable, to take away all colour of partiality or non indifference in the jurors,) whereupon every jury-man was examined before he was sworn of the jury, Whether he had contributed or advanced any monies upon the propositions for Ireland, or was to have any share in the rebels lands in Ireland by act of parliament or otherwise? But likewise in permitting him to take his peremptory challenge to 35 of the 42 jurors returned, without any particular cause alledged; which liberty our laws (f) allowing men *in favorem vitæ*, and because there may be private causes of just exceptions to them known to the prisoner, not fit to be revealed, or for which he wants present proof, and that in cases of high-treason as well as of felony, the court thought just and equal to allow the same to him, though a notorious Irish rebel. Wherefore it ought much more to be allowed to all English freemen less peccant, and not so notoriously guilty as this transcendent traitor; the debarring the party indicted of his lawful challenges, being to debar him of a principal matter concerning his trial, yea a means to take away his life without just cause or guilt; much more than a trial by such jurors, committees, commissioners, or other judges nominated by persons interested, or parties, without the denomination or direction of sworn officers of justice alone, against the course of the common law, as the statute of 11 H. 4. c. 9. and Coke's 3 Instit. p. 32, 33, resolve.

In this argument the readers, especially Irish students of the law, may take notice; first, of some observable passages and records (g) touching the settling of the laws and great charter of England in Ireland, the endenization of Irish natives to make them capable of

the laws and liberties of the English there; the statutes, peers of Ireland, and the trial of peers there for treasons, not obvious in other law-books; to which I at first intended to have added an appendix of the most remarkable passages in our histories, and chiefest records in the Tower relating to the sovereign jurisdiction of the kings and parliaments of England over Ireland, and to the parliaments, officers, government, and Affairs thereof, not hitherto published, and unknown to most, of very necessary and excellent use. Which being over-large for an appendix, I must reserve for a particular treatise by themselves; or joined with some other records and histories relating unto Scotland, most worthy of public view, if God send health and opportunity to communicate them to posterity. Only I shall here insert one pertinent record to manifest, that the trying of Irish malefactors in England, the binding them to appear, the recording their defaults and giving judgment against them for not appearing here for murders, robberies, and felonies committed or acted by them in Ireland, is no novelty (having omitted it in my argument) it being in use in the ninth year of king John, as this patent manifests.

'Rex (h) M. filio Henrici, Justiciario Hiberniæ salutem. Mandamus vobis quod deduci faciat secundum judicium Comitiss Dublin Galfredum de Marisco et alios qui reclusi sunt de incendio et roberia et morte hominum, et aliis rebus quæ pertinent ad Coronam nostram unde eis dies datus est coram nobis in Anglia a die sancti Michaelis ad 15 dies, ad quem non venerunt nec pro se responsales misceunt, et absentiam suam die illo Attornatis eis in defaultam. Et ipsos deduci fuerat secundum judicium prædicti Comitiss de vita et membris, et obsidibus, et vadiis, et plegiis, Teste meipso apud Theokesbury, 12 die Novembris.'

2dly. The readers may herein discern the treacheries, conspiracies, insurrections, rebellions of the native Irish, in all ages, since their submission to king Henry the 2d, A. D. 1171, and their swearing of fealty to him and his heirs, for ever as to their lawful kings and lords, recorded at large in our historians, (i) towards our kings and English nation, and their frequent endeavours utterly to cast off their dominion, and extirpate them out of Ireland, which is notably expressed in many of our records, as Claus. 5 E. 3, part 2. m. 12, dorso. Pat. 5 E. 3, pars 1. m. 25, Cl. 35 E. 3. m. 36, Claus. 36 E. 3. m. 42, dors. and Claus. 42 E. 3. m. o. and dors. 13, Whence Giraldus Cambrensis (who went along into Ireland with king Henry the 2d, and with his son John, when made king thereof by his father, who made the first

(e) Stamf. l. 2. c. 60.

(f) Coke's 3 Instit. p. 27. Stamf. Pleas of the Crown l. 3. c. 7. 32 H. 6. f. 26. 14 H. 7. f. 19. Brook Chal. 86, 211, 217.

(g) Page 32 to 9. 42 to 49, 38, 59. 63, 68, 59.

(h) Rot. Pat. An. 9. Johan. Reg. m. 4. n. 46.

(i) Hoveden, Annal. pars post. p. 527, 528. 529. Giraldus Cambrensis, Hybernia Expugnata, l. 1. and 2 Chron. Johan. Bronton, col. 1069, 1070, 1071. Mat. Westm. and Mat. Paris An. 1171, 1172, and others.

and fullest description of it, and its conquest, and of the manners, qualities of the Irish; of any of our Historians), gives this character of them and their deportment towards the English in that age; 'Præ omni alia gente prodicionibus semper insistent; fidem datam nemini servant, fidei et sacramenti religionem quam sibi semper servari summopere volunt, aliis præstitam quotidie violare nec verecundantur, nec verentur: unde et cum cautelas omnes observaveris et adhibueris, cum securitati et indemnitati tuæ tam sacramentis et obsidibus, quam amicitiiis firmiter junctis, et beneficiis multimodè collatis, modis omnibus invigilaveris, tunc primo timendum est tibi: quia tunc præcipue ipsorum vigilat malitia, cum ex securitatis abundantia te tibi præsensent non invigilare: Tum demum ad arcem nequitie, tum ad assucta fallaciæ telæ confugiunt, ut sumpta securitatis occasione lædere valeant vel improvisum.' (k) He subjoins, 'Inter alia multa artis iniquæ signamenta, hoc unum habent tanquam præcipuum argumentum: (and O that too many English as well as Irish were not guilty of this transcendant treachery and hypocrisy!) 'sub religionis et pacis obtentu ad sacrum aliquem locum convenient cum eo quem oppetere cupiunt: primo compaternatis fœdera jungunt: Deinde ter circa ecclesiam se invicem portant; postmodum ecclesiam intrantes coram altari reliquiis sanctorum, sacramentis multifarie præstitis, demum missæ celebratione, et orationibus sanctorum sacerdotum tanquam dispensatione quâdam, indissolubiliter fœderantur. Ad ultimum vero ad majorem amicitiae confirmationem, et quasi negotii consummationem sanguinem sponte ad hoc fustum, uterque alterius bibit. Hoc autem de ritu gentiliū adhuc habent, qui sanguinem in firmandis fœderibus uti solent.' O quoties in ipso desponsationis hujus articulo a viris sanguinum et dolosis, tam dolose et inique funditur sanguis, ut alteruter penitus maneat exanguis! O quoties eadem hora et in continent, vel sequitur, vel prævenit, vel etiam inauditomore sanguinolentum divortium ipsum interruptit desponsationem! 'Adeo prodicionis pestis hic invaluit et quasi radices posuit, adeo in naturam converti prævalet prævæ consuetudinis longus abusus, adeo a convicti mores formantur, et qui tangit picem con inquinabitur ab ea, adeo mali vis magna est, quod etiam advenæ eodem vitio inquinati sunt.' He adds in another place, 'Ad resistendum Anglis, et antiquæ libertatis sub capitum discrimine jura tuendum, unanimi voto conspirant. Et ut hunc plenius affectum deducere possint ad effectum, vinctis undique fœderibus, de novo fiunt ex hinc amici qui antea fuerunt inimici.' (l) All which we find verified of them in this last rebellion and massacre of the English, for which this prisoner was indicted and executed: so as we may well conclude of the Irish in his ensuing words. 'Nationis subdolæ

'longè fortius timenda est ars, quam Mars; pax quam fax; mel, quam fel; malitia, quam malicia; proditio, quam expeditio; amicitia præfucata, quam inimicitia despiciata.' (m)

3dly. The readers may here in part discern, by whom, and in what manner the laws of England were first established in Ireland, and how far, and to what persons there: to which I shall add this passage of Mat. Paris, (n) A. D. 1172, touching K. Henry the 2nd, his settling our laws there. 'Rex Pater antequam ab Hybernia rediret apud Lismor Concilium congregavit, Ubi Leges Angliæ ab omnibus sunt gratanter acceptæ, et juratoria cautione præstita, confirmatæ.' With that of Sylvester Geraldus, (o) who reciting the constitutions made at the council of Casils in Ireland under this king Henry for the government of the church, and reformation of the manners of the Irish, there recorded at large, concludes thus. 'Itaque omnia divina ad instar sacrosanctæ Ecclesiæ juxta quod Anglicana observat Ecclesia in omnibus partibus Hyberniæ amodo tractantur. Dignum etenim et justissimum est, ut sicut Dominum et regem ex Anglia, sortita est divinitus Hybernia, sic etiam exinde vivendi formam recipiant meliorem. Ipsi namque Regi magifico tam Ecclesia quam Regnum Hyberniæ debent, quicquid de bono pacis, et incremento Religionis hactenus est assecuta.' After which the Irish rebelling, and casting off the English laws, king John (p) A. D. 1211, arriving at Dublin with a great army; 'Occurrerunt ei ibidem plusquam viginti Reguli illius Regionis, qui omnes timore maximo perterriti, homagium illi et fidelitatem fecerunt: Fecit quoque Rex, ibidem construere Leges et Consuetudines Anglicanas, ponens Vicecomites et alios Ministros qui populum regni illius juxta Leges Anglicanas judicarent,' (to wit, in the English pale, (q) and territories reduced into counties, and under the king's dominion) as Matthew Paris and others story.

4thly, the readers and our whole nation may hereby and herein discover, for their present and future information, the provident care and prudence of our English parliaments in all former ages, to secure the lives and inheritances of all English freemen and Irish subjects against all arbitrary, tyrannical power and proceedings whatsoever, even in cases of pretended or real treasons, and the highest capital offences, by providing and enacting from time to time, that not only all English freemen, but all other Irish or outlandish persons accused of any high treasons, misprisions or concealments of treasons committed by them either within or without the realm of England, should be impeached of, and arraigned for the same, only upon a

(m) Hybernia Expug. c. 97.

(n) Hist. Ang. Edit. Lond. 1640. p. 126.

(o) Hybern. Expug. l. 1. c. 34.

(p) Mat. Paris Hist. Angl. p. 250. Hen. de Knyghton de Event. Angl. l. 2. c. 15. col. 2420.

(q) Sir John Davis his Irish Reports, p. 37, 38.

(k) Typographia Hybernia, c. 20. 22. 24.

(l) Hybernia Expugnata, l. 2, c. 25. p. 808.

legal presentment or indictment first found against them by a jury of good and lawful men upon their oaths; and after that tried for the same by another legal jury of 12, honest and substantial indifferent freeholders upon their oaths, or by the lawful judgment of their peers, if English peers, and not forejudged of life or limb, nor outlawed, exiled, put to death, passed upon or any way destroyed, but only by the lawful judgment of their peers, according to the due course of the common law, and not otherwise, is the grand Charter of king John, the statute of Magna Charta, ch. 29, in 9 H. 3, 25 E. 1, c. 1, 28 E. 1, c. 1, 5 E. 3, c. 9, 20 E. 3, c. 2, 25 E. 3, c. 2. of treasons, 28 E. 3, c. 3, 42 E. 3, c. 3, 2 R. 2, rot. parl. n. 57, 1 H. 4, rot. parl. n. 44, 2 H. 4, n. 60, 89, 2 H. 5, c. 6, 30 H. 6, c. 9, 22 H. 8, c. 9, 23 H. 8, c. 13, 26 H. 8, c. 13, 28 H. 8, c. 7, 10, 18, 31 H. 8, c. 8, 14, 32 H. 8, c. 4, 35, 33 H. 8, c. 12, 20, 21, 23, 35 H. 8, c. 2, 3, 1 E. 6, c. 12, 5 E. 6, c. 11, 1 Mar. c. 6, 1 & 2 Phil. & Mar. c. 10, 11, 1 Eliz. c. 1, 6, 5 El. c. 1, 13, El. c. 1, 14 El. c. 1, 18 El. c. 1, 23 El. c. 1, 27 El. c. 2, 3 Jac. c. 2, the Petition of Right 3 Caroli. with sundry other statutes enact, and all our law books (r) resolve: so that no man's life whatsoever can legally be hazarded or taken away for any real or pretended treason or capital crime, without a double jury, and the verdicts of 24 sworn good honest men at the least, or more, or by a Grand Jury, and 12 or more peers of the realm, if an English peer; and in case of Foreigners, by a jury of 6 English, and 6 of their own country-men, if so many may be found fit to be returned of a jury, to avoid partiality: which seconded must be with the judgment of one or more sworn judges sitting on the tribunal of justice. Which treble bulwark and grand fundamental security of all English freemen's and others lives, inheritances, families, estates, against all unlawful conspiracies, practices, combinations, subornations of witnesses, machiavilian policies, and arbitrary tyrannical powers, proceedings whatsoever, especially in perilous treacherous times, if once undetermined, subverted, or interrupted by arbitrary courts-martial, committees, or any other new erected tribunals, by what names or specious pretences whatsoever of public safety, danger, or necessity, what sad effects it would soon produce to the endangering, yea loss of the lives, inheritances, fortunes of the most innocent, best deserving persons, and real patriots of their country's laws and liberties, through the power, policy, confederacy, covetousness, ambition, revenge, malice, emulation, suspicion, tyranny, injustice, partiality, self-interests of suborned, perjured witnesses, or despicable, powerful prosecutors, accusers, and of unrighteous packed, partial pre-engaged judges, (admitting no legal pleas against their

exorbitant jurisdictions, no legal challenges to their persons, nor appeals from their unjust sentences, though capital, without any clear testimony to prove them guilty and worthy of death by our known laws) all lovers of their own families, friends, neighbours, liberties, lives, estates, or the public safety, may easily resolve, not only from sundry experiments and Histories (s) in former and late ages over tedious to recite; but by the memorable precedents of innocent Naboth recorded for this purpose in sacred writ, 1 Kings, 21, and of the Prophet Zechariah, 2 Chron. 24, 20, 21, 22, compared with that of Psal. 94, 20, 21, 'Shall the throne of iniquity have fellowship with thee which frameth mischief by a law? They gather themselves together against the soul, or life, of the righteous, and condemn the innocent blood:' with Ezech. 22, 6, 9, 12, 27, and Isaiah 59, 6, 7. 'Behold the princes of Israel, every one were in thee to their power to shed blood. In thee have they taken gifts to shed blood. Her princes in the midst thereof are like wolves ravening the prey. To shed blood and to destroy souls' (that is the lives of innocent men under a pretence of law (t) justice for pretended crimes, treasons) 'to get dishonest gain: their ways are ways of iniquity, the act of violence is in their hands; their feet run to evil, and they make haste to shed innocent blood: their thoughts are thoughts of iniquity: wasting and destruction are in their paths, there is no judgment, or justice, in their goings, they have made them crooked paths,' paralleled with Jer. 22, 17, 'But thine eyes and thine heart are not but for thy covetousness, and for to shed innocent blood, and for oppression and violence to do it.'—Such monsters of injustice, rapine, oppression, violence, against all laws of God and man, do kings, princes, and great men degenerate into even among God's own people, when they break down the pales and fences of public laws and justice made for their subjects preservation, and let loose the reins to arbitrary government, and lawless proceedings, to shed their blood, or confiscate their estates, supplant and ruin their posterity in a seeming way of justice. The consideration of which sacred texts and precedents should both caution and engage all future English parliaments, the whole nation, and every individual member thereof, for ever to abandon and abominate such irregular judicatures and extravagant proceedings, and not to give the least countenance or encouragement thereunto, especially after this memorable precedent of the lord Maguire, and our many years late contest in parliament and bloody encounters in the field, to maintain the fundamental laws, privileges, and good customs

(r) Stamford's Pleas of the Crown, l. 3, c. 1, to 8. Coke's 2 Instit. p. 48, to 53, 3 Instit. c. 1, 2. Brook, Firsh. Statham, Ash, tit. Coron. Trial, Treason.

(s) See Sir Walter Raleigh his preface to the History of the World, D. Beard's Theatre of God's Judgments on the 6th Commandment.

(t) See Lyra, Testatus, Lavater, Polanus, Maldonat, Cornelius a Lapide, Junius, and others on these texts.

of this kingdom (whereof the trial of men by a lawful indictment, jury, and verdict of their peers, is the principal) whereby not only the supreme authority, but the people's security of lives, lands, livings, and privileges, both in general and particular, are preserved and maintained, and by abolishing or alteration of the which, it is impossible but that present confusion will fall upon the whole state and frame of this kingdom; as king James himself, and the whole parliament long since resolved in the act of 1 Jacob. ch. 2, and without the full possession of which fundamental rights, laws and liberties, we can have little hopes, as to human considerations, to enjoy any comfort of life, or so much as life itself, but at the pleasures of some men, ruling merely by will and power; as the generals, officers, and army themselves have long since published and declared to the parliament, and world, in express words, in their declaration and representation humbly tendered to the parliament, (u) concerning the just and fundamental Rights and Liberties of themselves and the kingdom, June 14, 1657, which they may do well to remember and pursue: in prosecution whereof, in the heads of proposals agreed upon by his excellency and the council of the army, to be tendered to the commissioners of parliament residing with the army; containing the particulars of their Desires in pursuance of their former declarations and papers, Aug. 1, 1647. Proposal 10, they desired, That the rights of the commons of England might be cleared, as to a due exemption from any judgment, trial, or other proceedings against them by the house of peers, without the concurring judgment of the house of commons. As also from any other Judgment, Sentence, or Proceeding against them other than by their equals, or according to the law of the land. Which how inconsistent it is with all military and summary proceedings in all new courts, committees, or commissions since erected, I refer to their own consciences and judgments to resolve.

5thly, The readers may hereby discern, that errors themselves in the courts of Ireland, with other grievances could not anciently be redressed in the parliaments thereof, but only in England, (x) till 29 E. 3, as is evident by this memorable hitherto unprinted record made for relief in such cases.

‘Rex justiciario et cancellario suis Hiberniæ, salutem. (y) Ex parte nonnullorum fidelium nostrorum communitatis terræ nostræ Hiberniæ, Nobis est graviter conquerendo monstratum, ut cum ipsi dampna et gravamina quæplurima à magno tempore sustinuerint ex hoc, quod ipsi terras et tenementa sua in ma-

num nostram per ministros nostros, terræ prædictæ, cum nomine districtionis, cum ex causa transgressionis, sive alienationis sine licentia nostra faciat, voluntariè et absque causa rationabili capta, extra manus nostras, licet ritè et processu debito inde penes vos et alios de consilio nostro in partibus illis, juxta legem et consuetudinem terræ prædictæ prosequuti fuissent recuperare non possunt. (z) Et etiam ex hoc, quod errores qui in Recordis et Processibus placitorum coram justiciariis nostris et aliis curiis et placis in eadem terra, quæ recordum habent, habitis, et in redditionibus judiciorum et placitorum eorundem intervenisse prætenduntur in parliamentis in eadem terra corrigi nequeunt, nec alias justiciam inde fieri sine remedio in Anglia querendo; propter quod, quidam propter labores et expensas circa præmissa oppositis ad maximam miseriam et inopiam deducantur, et quidam omnino exheredati existunt; unde iidem fideles nostri nobis cum instantia supplicarunt, ut super præmissis remedium congruum apponi faciamus. Et quia videtur nobis et consilio nostro durum esse et grave, quod conquerentes super assecutione justiciæ de injuriis sibi illatis in partibus prædictis, taliter absque remedio fatigerentur; per quod pro quiete, et indempnitate populi nostri in terra prædicta sub nostro regimine existentes, cui in exhibitione Justiciæ sumus debitores; ordinavimus, quod de omnibus terris et tenementis in terra prædicta per justiciarios, escaetores, seu quoscumque alios ministros nostros sub sigillo nostro in manum nostram captis, illis qui pro eadem terris et tenementis extra manum nostram debito et justo processu coram vobis prosequi voluerint, super hoc plena justiciam secundum legem et consuetudinem terræ nostræ Angliæ, et dictæ terræ nostræ Hiberniæ fiat, quibuscumque mandatis nostris sub magno vel privato sigillo nostro Angliæ, vobis aut aliis ministris in terra prædicta ante hæc tempora directis, non obstantibus. (aa) Et quod ad prosecutionem omnium et singulorum qui conqueri voluerint errores in recordis vel processibus coram aliquibus justiciariis seu aliis ministris prædictis intervenisse. Rotuli eorundem recordorum et processuum in parliamentis nostris in eadem terra tenendis, per justiciarios seu ministros, coram quibus recordo et processus illa fuerint, deferantur, et ibidem eadem recorda et processus diligenter recitentur et examinentur, et errores si quos in eisdem inveniri contigerit, debite corrigantur. Et ideo vobis mandamus, quod Ordinationem prædictam in terra nostra prædicta teneri, et paribus conquerentibus plenam et celerem justiciam fieri faciatis in forma prædicta, quibuscumque mandatis vobis aut aliis in terra

(u) A Declaration of the Armies Engagements, &c. p. 36, 37, 112, 114.

(x) See here p. 19. Crook's 1. Rep. m. 14 Car. p. 511, 512.

(y) Claus. 39 E. 3, m. 12. De erroribus corrigendis in Parliamentis tenendis in Hibernia.

(z) See Pat. 8. Johan. Regis, m. 1, 2. Pat. 9. Iohan. Reg. m. 4. n. 26.

(aa) See 2 E. 3. c. 8, 18 E. 3. stat. 3, 20 E. 3, c. 1 2 Claus. 5. E. 3, part 1, m. 27, 1 R. 2, n. 96, 2 R. 2, n. 51, Claus. 20 E. 3, part 1, dors. 13.

‘prædicta ante hæc tempora in contrarium directis, nonobstantibus. Ita quod aliquis materiam non habeat nobis pro defectu justitiæ, super casibus prædictis, de cætero conquærendi. Teste rege apud Westm. 30 die Aug. Per ipsum regem et consilium.’

If then the king and his council in England might thus by this their Ordinance made in England, without a parliament, redress these grievances and failures of justice in cases only of private concernment in Ireland itself, formerly examinable and remediable only in England, for the ease and benefit of the loyal subjects, (not of Irish enemies and rebels) there; much more may the king and parliament of England for the preservation of the king's crown, interest, and of the lives, inheritances of all his loyal subjects there, and securing the peace of Ireland, enact and ordain, that all Irish rebels, traitors, committing High Treason, and taking up arms against the king, and destroying his liege people there, especially in times of universal rebellions and insurrections, shall be sent over thence, and tried for the same in England, by a sworn jury of lawful indifferent Englishmen in the King's-bench, be they Commons or Peers of Ireland, without any injury or injustice.

Thus submitting this argument to the candid censure, and friendly embracement of every judicious reader, and craving a share in his prayers for God's gracious blessing both on me and it, I leave it to the readers' immediate perusal without further Prologue.

From my study in Lincoln's-inn, June 19, 1658, on which day of the month 1637, I was taken *pro confesso* by the Star-Chamber lords upon a pretended contempt, in refusing to answer; (bb) when as themselves refused to give me leave to plead, or answer, and rejected the answers tendered in court under my own and my counsel's hand, to the information there exhibited, against all rules of law, justice, and of that very Court.

WILLIAM PRYNN.

I apprehend it neither unseasonable nor unprofitable to publish this Argument at Law concerning the Trial of Irish Peers for foreign Treasons acted by them, made by me near 14 years past, in the King's-Bench Court at Westminster, in the case of Connor Macguire, an Irish baron, there indicted for High-Treason, in having a principal hand in the late bloody rebellion in Ireland; against whom I was (by special order) assigned counsel, among others, by the parliament then sitting; upon whose plea, and a demurrer thereunto, I first argued this new point in law, never formerly disputed, adjudged in open court, Whether an Irish Peer (or commoner) committing Treason in Ireland, sent over from thence into England against his will, might be lawfully tried for it

(bb) A new Discovery of the Prelate's Tyranny, p. 5, 37, 132, 147.

in the King's-Bench at Westminster by a Middlesex jury, and outed of his Trial by Irish peers of his condition, by the statute of 35 H. 8, c. 2. After two solemn arguments at the bar, by myself and serjeant Rolls, against, and Mr. Hales, and Mr. Twisden for the prisoner, and Mr. Justice Bacon's argument on the bench, his plea was over-ruled, adjudged against him; it being resolved, he might and ought to be tried only by a jury of Middlesex, not by his peers of Ireland: whereupon he pleading Not Guilty to his indictment, was tried by a substantial jury (to whom he took both his peremptory and legal challenges, which the court allowed him of right), and after a very fair and full trial, was found guilty by the jury, upon most pregnant evidence; and then condemned, and executed as a traitor at Tyburn. Prynn's Preface to his Argument, p. 1, 2. Mr. Prynn in his celebrated Speech [Dec. 1648.] in support of the "satisfactoriness of the king's Answer to the houses Propositions," says "Nor did I ever yet receive so much as your public thanks for any public service done you, which every preacher usually receives for every sermon preached before you, and most others have received for the meanest services; though I have brought you off with honour in the cases of Canterbury and Macguire when you were at a loss in both." 3 Cobb. Parl. Hist. 1153.

The CASE and PLEA of the Lord Macguire.

Connor Macguire, by the name of Connor Macguire of London, esq., was, in Michaelmas Term last, indicted in this court for several High Treasons committed by himself, together with Hugh Mac-Mahon and divers other conspirators and false traitors against our lord the king, within the realm of Ireland in *partibus transmarinis*, on the 23d day of October, 17 Caroli. Upon his arraignment at this bar, after Not Guilty pleaded, being demanded how he would be tried? he put in this special plea, as to the particular manner of his trial only, under his counsel's hand.

That by the statute of Magna Charta, it is enacted, That no freeman ought to be imprisoned, &c. Nor will we pass upon him, but by the lawful judgment of his peers, or by the law of the land. That after this, in a parliament held at Droghedah in the kingdom of Ireland, in the 10th year of king Henry 7, it was enacted, That all statutes late made within the realm of England concerning or belonging to the common and public weal of the same, from thenceforth should be deemed good and effectual in law; and over that, be accepted, used, and executed within the land of Ireland in all points, and at all times requisite, according to the tenor and effect of the same: And that by authority aforesaid they and every of them be authorized, approved, and confirmed in the said land of Ireland; That before the time of the supposed treasons, king Charles, by

his letters patents under the great seal of Ireland, bearing date the last day of August, in the 4th year of his reign, at Dublin in Ireland, did create Brian Macguire, father of the said Connor Macguire, baron of Iniskellen in the county of Farmanagh in the said realm; and granted to him and the heirs males of his body, the title, honour, and dignity of the said barony, and to have a place and voice among the peers and nobles of Ireland in the parliaments of that realm: By virtue whereof the said Brian was seized in his demesne as of fee tail of the said barony, and died seized thereof at Dublin, 1 Feb. 12 Caroli, before the supposed treasons; after whose death the said barony descended to him as heir in tail: That by virtue of these letters patents, before the said supposed treasons committed, he was one of the barons, lords, and peers of parliament in the realm of Ireland; and at the parliament begun and held there the 16th day of March, 16 Car. at Dublin, and continued until the 17th of August then next following, and then adjourned till the 9th of November next ensuing, and thence prorogued to the 24th of February next following, and from thence continued till the 24th of June, 17 Car. he was present as one of the peers of the realm of Ireland. And further saith, That on the 23d of October, 17 Car. he was taken and arrested by certain persons to him unknown at Dublin, in Ireland, and there committed to safe custody for the treasons pretended to be committed by him, till afterwards he was, on the 12th of June, 18 Car. by certain persons to him unknown, brought in safe custody, against his will, to Westminster within the realm of England, and then and there committed to the Tower of London, where he is yet detained. And therefore prayeth, That he may be tried and judged by his peers of the realm of Ireland, for the supposed treasons in the indictment. To this plea of his Mr. Aske, the king's attorney in this court, hath demurred in law, and the prisoner hath joined in demurrer. And whether this plea of the prisoner, as to his trial by his peers of the realm of Ireland, be good in law? is the sole question to be now argued.

This case is of very great concernment, and yet of greater expectation: It concerns the whole peerage of Ireland in some respects, on the one hand; and on the other, the justice both of the king, parliament, and kingdom of England, in bringing a desperate rebel and arch-traitor to condign punishment, for the most horrid, bloody treason against the king's royal crown and authority, the protestant religion, and the whole English nation inhabiting Ireland (devoted to destruction by this traitor and his confederates), that ever was plotted or executed under the sun. The eyes of all our three kingdoms (highly concerned in, and deeply suffering by, this treason), but more especially the eyes and hearts of our adjoining vigilant parliament (which hath especially recommended it to this court, and assigned myself, among others, counsel in this case), are

intensively fixed upon the final result and issue of it. I wish my vacancy to study and ability to argue this public cause, had been such as might have satisfied expectation, and discharged the trust reposed in me; but other public services having much interrupted me therein, I shall begin to argue it for the present with the best skill I may, and so leave it to those learned gentlemen of the law, if there shall be need of any further arguments, who are provided to argue after me, to supply what is defective in this my proemial argument.

All matters of fact and form arising in this plea have been already admitted true, and sufficiently pleaded in law by mutual consent, and nothing but the mere matter in law rests now to be debated, which I conceive to be but one short, single point.

For though the prisoner pleads, That there was a parliament, of which he was a peer and member, continuing in Ireland by prorogation at the time of his apprehension and sending over into England; yet this privilege of parliament comes no ways in question as to the point of his trial, now only in issue (as hath been falsely suggested to the lords house, and intimated in an ordinance of theirs since revoked), but relates only to his first apprehensions, which is not here in controversy. Besides, he pleads not, That this parliament is yet continuing and actually sitting in Ireland, of which he ought to have (a) the privilege; but that it was continued till the 24th of June, 17 Car. which is three years since, and so intended to be long since ended: Nor pleads he, That he ought to be, or to have been tried for his treason in the parliament of Ireland, nor that his privilege of parliament ought to extend to secure him from any apprehension or indictment for high treason (when the treason is visible and real, as his is, and not imaginary only), in which case of treason no privilege of parliament is to be admitted, as hath been resolved, 8 H. 6, rot. parl. n. 57, 31 H. 6, rot. parl. n. 25, 26, 27, Coke's 4 Inst. fo. 25. So as the matter of his privilege of parliament is quite out of doors, and the sole point in issue is but this:

Whether a peer of Ireland committing high treason in Ireland, for which he is there apprehended, and afterwards by order of parliament here brought thence into England against his will, may be indicted and tried for that treason in this court of King's-Bench by a jury of Middlesex only, not by his peers of Ireland, by virtue of the statute of 35 Hen. 8. cap. 2.?

And under favour, I conceive in some clearness affirmatively, That he may and shall be tried here by an ordinary jury of Middlesex, and outed of his peerage, by virtue of this Act.

The question arising merely upon the Act itself, which is very short, I shall first recite it, and then draw my arguments out of the very intention, words, and bowels of it.

(a) See 3 E. 4, c. 1, in Ireland.

The act of 35 Hen. 8. cap. 3.

'For as much as some doubts and questions have been moved, That certain kinds of treasons, misprisions, and concealments of treasons, done, perpetrated, or committed out of the king's majesty's realm of England, and other his grace's dominions, cannot, ne may, by the common laws of this realm, be enquired of, heard, and determined within this his said realm of England; for a plain remedy, order, and declaration therein to be had and made, be it enacted by authority of this present parliament, that all manner of offences being already made or declared, or hereafter to be made or declared, by any the laws and statutes of this realm, to be treasons, misprisions of treasons, or concealments of treasons, done, and perpetrated, or committed, or hereafter to be done, perpetrated, or committed, by any person or persons out of this realm of England, shall be from henceforth inquired of, heard and determined, before the king's justices of his bench, for pleas to be holden before himself, by good and lawful men of the same shire where the said bench shall sit and be kept, or else before such commissioners, and in such shire of the realm, as shall be assigned by the king's majesty's commission, and by good and lawful men of the same shire, in like manner and form, to all intents and purposes, as if such treasons, misprisions of treasons, or concealments of treasons, had been done, perpetrated, and committed within the same shire where they shall be so enquired of, heard, and determined, as is aforesaid.

'Provided always, that if any the peers of this realm shall happen to be indicted of any such treasons or other offences aforesaid, by authority of this act, that then after such indictment they shall have their trial by their peers, in such like manner and form as hath been heretofore accustomed.'

From this act I shall deduce several arguments and conclusions to prove, that the prisoner at the bar, though a peer of Ireland, shall be tried by an ordinary jury of Middlesex here, not by his peers in or of Ireland, for the treasons committed in Ireland, whereof he stands here indicted:

For my more methodical proceeding, I shall divide the single point in controversy into these three subordinate questions:

I. Whether this statute extends to treasons committed in Ireland, by Irish Commoners?

II. Whether it reacheth to treasons in Ireland perpetrated by Irish peers, as well as by Irish commons?

III. Admit it extends to Irish peers as well as commoners, whether it doth not then inevitably out them of their trials by Irish peers, and subject both of them alike to a trial at this bar, by a Middlesex jury?

For the first, Whether this act extends to treasons committed in Ireland, by Irish com-

moners? There is but little doubt of it. For first, it is as clear as the sun at noon-day, that this act extends to all treasons done or perpetrated in Ireland by Irish commoners; for the main scope and intent of this law being to make all manner of offences then made or declared, or hereafter to be made or declared to be treasons, misprisions of treasons, or concealments of treasons, by any laws or statutes of this realm, done, perpetrated or committed by any person or persons out of England, inquirable or triable within this realm, without any scruple or difficulty, either in this court, or before such commissioners in such shire of this realm, as the king by his commission shall assign, the very sum and substance of this act, as the express letter thereof resolves, the realm of Ireland being out of this realm of England, and no part thereof, and treasons therein committed by commoners, being treasons done and perpetrated out of this realm of England; (as is clear by 20 H. 6, f. 8, a. b. 19 H. 6, 53, b. 32 H. 6, 25, b. 2 R. 3, f. 12. 1 H. 7, f. 3, Plowden 368, b. Dyer, f. 360, b. Coke 7 Report, f. 22, 23. Calvin's Case, 1 H. 5, c. 8, 4 H. 5, c. 6, Coke's Instit. p. 11. 18.) these treasons must certainly and most necessarily be both within the intent and words of this law, and so consequently triable in this court by an ordinary jury of Middlesex, without any scruple or difficulty: The rather because Ireland, though out of this realm of England, is yet part of the king's dominions, and a subordinate kingdom, united and annexed to the crown of England, governed by the laws of England, and bound by acts of parliament made in England in many cases, as is resolved, and undeniably evidenced by Pat. 6, Johan. m. 6, n. 17, Rot. Pat. 8, Johan. m. 1, Claus. 12 H. 3, m. 8, Pat. 30 H. 3, m. 3. 14 H. 3. The statute of Ireland, Pat. 5 E. 3, pars 1. m. 45, 11 E. 3, c. 2, 3, 4, 5. 27 E. 3, c. 3, 18. 13 E. 1, Stat. de Mercat. 1 H. 5, c. 8. 4 H. 5, c. 6. 1 H. 6, c. 3. 3 H. 7, c. 8. 1 H. 8, c. 5. 32 H. 8, c. 4. 35 H. 8, c. 2. 32 H. 6, Statutes of Ireland, c. 1. 8 E. 4, in Ireland, c. 1. 10 H. 7, in Ireland, c. 4, 5, 22. 7, H. 8, in Ireland, c. 1. 28 H. 8, in Ireland, c. 2, 3, 5, 6, 7, 8, 13, 15, 18, 19. 33 H. 8, in Ireland, c. 1. 1 H. 7, f. 3, Kelway f. 202. b. Coke's 7 Rep. f. 22, 23, Calvin's Case, 1. Instit. f. 141, b. 4 Instit. f. 349, 350, &c. 3. Instit. p. 18. Mr. Saint John's argument at law at Strafford's attainder. vide Rushworth's Strafford's trial, p. 694, et seq. and therefore treasons there committed are more apt and proper to be tried here within the letter and intention of this law, than treasons done in France, Spain, or any parts else, out of the king's dominions, where our laws and acts of parliament are not obligatory.

II. This statute, as I conceive, was principally made to punish treasons, misprisions of treasons, and concealments of treasons in Ireland, where they were more frequently done and perpetrated, than in any or all parts of the world out of this realm of England, as our his-

tories and the (b) Irish statutes record : and the horrid general treason, insurrection and rebellion in Ireland (much like this for which the prisoner is indicted), mentioned in the statute of Ireland, 28 H. 8, c. 1, but seven years before this act, with other frequent treasons and rebellions, there were, no doubt, the chiefest ground of making this new law. And that which puts it out of all dispute, is the statute of 28 H. 8, made in the parliament at Dublin in Ireland, c. 7, which reciting the statute of 26 H. 8, c. 13, made in England, concerning treasons and enacting, (as this of 35 H. 8.) "That if any of the king's subjects, denizens, or others, do commit or practise out of the limits of this realm of England, in any outward parts, any such offences, which by this act are made, or heretofore have been made treason, that then such treason, whatsoever it be, that shall so happen to be done or committed, shall be enquired and presented, by the oaths of twelve good and lawful men, upon good and probable evidence and witness, in such shire and county of this realm, before such persons as it shall please the king's highness to appoint by commission under his great seal, in like manner and form as treasons committed within this realm have been used to be enquired of and presented : and that then upon every indictment and presentment founden and made of any such treasons, and certified into the King's Bench, like process, and other circumstance shall be there had and sued against such offenders, as if the same treasons so presented had been lawfully found to be done and committed within the limits of this realm, &c." adds this memorable clause thereto, "Considering then this statute made in the realm of England, is most beneficial and expedient to have due execution within the king's land and dominion of Ireland, especially in respect of the high rebellion here lately committed, that the odible infamy against the king and queen in the same act expressed, and other offences, abuses, and abominations there mentioned, principally have been promulged, pronounced, done and attempted within this said land, Be it therefore established, ordained, and enacted, by authority of this present parliament, That the aforesaid statute and ordinance, and every thing and things therein contained, be established, confirmed, accepted, deemed, judged and taken for a good and right law within the king's land and dominion of Ireland, and to be as good, effectual, and of the same strength and quality, effect, force and virtue, to all intents and purposes within the said land, as the same is or ought to be in the realm of England; and that the said statute and act made in England, and every

(b) See the Statutes of Ireland, 3 E. 2, c. 4. 18 H. 6, c. 2, 3. 25 H. 6, c. 4, 5. 28 H. 6, c. 10. 1 E. 4, c. 2. 5 E. 4, c. 6. 18 E. 4, c. 2, 10 H. 7, c. 6, 8, 9, 10, 13, 17, 19, 28 H. 8, c. 1, 3, 9, 11. 3 Phil. & Mar. c. 11. 1 Eliz. c. 6, 17. 27 Eliz. c. 1. 28 Eliz. c. 8, 9. 11 Jac. c. 4, and the Annals of Ireland.

thing therein contained, shall have relation, and take effect within this land of Ireland against all offenders contrary to the form thereof, &c." Now that act of 26 H. 8, c. 13, with this of 35 H. 8, c. 2, being principally made and intended for the treasons done and committed in Ireland, as this Irish parliament resolves *in terminis*, and being most beneficial and expedient for that realm; it would be very illegal, yet irrational, absurd, impolitic, and improvident, to exclude Ireland out of this law, where treasons were most frequent, most dangerous to our kings and realm, and to extend it only to other places out of the realm, where treasons were seldom done or perpetrated, and nothing so perilous to the king and realm of England, as treasons, rebellions in Ireland have usually been in former and later ages.

3. It hath been adjudged by all the judges of England both in (c) Orouk's Case, 33 Eliz. and in sir John Perrot's Case, 24 Eliz. cited in Calvin's Case, Coke's 7 Report, f. 23, a. in his 1 Institutes on Littleton, f. 26, b. 3 Institut. p. 11, 24, and so it was agreed without any argument in Hugh Mac-Mahone's Case, this last Michaelmas term (the prisoner's confederate in this horrid treason,) that treason committed in Ireland itself by an Irish commoner, is triable in this court by this very statute, (contrary to the subitane, extrajudicial opinion of Dyer, M. 19 & 20 Eliz. fol. 360,) resolved since to be no law: seeing then it hath been thus frequently resolved heretofore, and in case of the treasons now in question this very last term without any scruple; That an Irish commoner committing treason in Ireland, and brought over from thence hither against his will, is triable in this court by a Middlesex jury; there is no doubt at all of the first question, but that this statute extends to treasons committed in Ireland by Irish commoners, and the doubt, if there be any, will rest merely in the second point, which I am already arrived at; namely,

Whether this act extends to treasons perpetrated in Ireland by Irish peers, as well as by Irish commoners? And under correction, I conceive, with much clearness, that it doth, for these ensuing reasons.

1. From the generality and universality of the act itself; wherein I shall observe a four-fold universality, which supplies me with four undeniable Arguments, to prove Irish peers within this law, as well as Irish commoners.

The first is a universality of the kinds of offences specified in the act, in these general terms; 'all manner of offences being already made or declared or hereafter to be made or declared, by any the laws or statutes of this realm, to be treasons, misprision of treasons, or concealment of treasons, done or perpetrated out of this realm of England, shall be enquired of by the king's justices of his bench, &c. Now these general words, all manner of

(c) See Mr. St. John's Argument against the earl of Strafford, in Rushworth's 'Strafford's Trial, p. 694. (aute, vol. 3 p. 1600.)

offences, &c. must necessarily extend to all manner of treasons perpetrated or committed out of this realm, by peers as well as commoners; to this treasons of the lord Macguire, as well as to the treasons of Mac-Mahone, esq. they being the self-same treasons in substance, and a manner of treasons specially made and declared by the laws of this realm, since there are no restrictive words to confine these general clauses of treasons only to commoners, and no express exception for the offences or treasons of Irish peers to be found within the statute; else there would be a repugnance and contradiction between the text and the gloss, and this general should be turned into a specific in respect of the traitors offending: Therefore this general clause extending to all treasons whatsoever done or perpetrated out of the realm, must necessarily extend to the treasons of all Irish peers as well as commons; and so both of them, by the words and intention of this law, shall be triable in this court.

The second is a universality of time. 'All manner of offences already made or declared, or hereafter to be made or declared, treason, &c. done, perpetrated, or committed, or hereafter to be done, perpetrated, or committed, shall be enquired of by the king's justices of his bench, &c.' which extends to all former treasons done out of the realm at any time before the making, and to all future treasons since the passing of this act: Now this universality of time extends as well to the treasons of Irish peers as commoners, to the treasons of baron Macguire as well as of Mr. Mac-Mahone, both being alike treasons committed after this act.

The third is a (d) universality of place: 'All manner of treasons done, perpetrated, or committed out of this realm of England,' that is, in any place whatsoever out of the realm of England, be it in Ireland, Scotland, France, Spain, Germany, Italy, Barbary, Turkey, the East or West Indies, as was resolved in Dr. Storie's case, Hil. 13 Eliz. Dyer 298, b. 3 and 3 Phil. and Mar. Dyer 131, 132. Now this extends generally to all foreign treasons committed by peers as well as commons, and so to the treason of the prisoner at the bar, it being done in Ireland, out of this realm of England, and so fully within the act.

The 4th, which is fatal and unanswerable, is a universality of persons, coupled together with all the three former generalities in these express words; 'All manner of offences made treason, &c. done, perpetrated, or committed by any person or persons, out of this realm of England, shall be from henceforth enquired of, heard and determined before the king's justices of his bench, &c.' Now 'any person or persons' being a universal expression, equivalent to all manner of persons whatsoever collectively, or, to all and every person whatsoever, distributively, extends to Irish peers, as well as commoners, yea, to all subjects, of all ranks whatsoever, within the compass of this law, in regard of the man-

ner of trial, but such only who are excepted out of it by special Proviso. Now Irish peers are none of those persons excepted, as I shall prove anon.

That these words, 'any person or persons,' extend to peers as well as commoners, where there is no exception of peers, is undeniable.

First, Because a peer is a person, though of a higher rank or degree than an ordinary commoner, or freeman, and one kind of person in law; therefore within these words, 'any person or persons.'

Secondly, Because general laws, made for the common good, safety of the realm, and punishment of the grand crime of high treason, are like to God himself (*d<sup>e</sup>*), no respecters of persons, but bind and punish all alike. Therefore 'any person or persons,' in such a public law as this, made for the common good, safety, and punishment of the greatest treasons, evils, must necessarily include all persons, subjects whatsoever, and except none, especially the greatest, whose examples and offences are commonly most dangerous and pernicious.

Thirdly, In all public acts whatsoever, these words, 'any person or persons,' extend to peers as well as commoners; and I know no one precedent to the contrary. To instance in some few acts, instead of many: in the statutes of 26 H. 8, c. 13, and 5 and 6 E. 6, c. 11, concerning Treasons, 'any person or persons, or any of the king's subjects, denizen, or others, that shall commit or practise Treason out of the limits of this realm, in any outward parts, extend to peers as well as commons:' therefore, in this act of the same nature. So in the statutes of 1 Ed. 6, c. 1, 2, and 3 Ed. 6, c. 1, 5 and 6 Ed. 6, c. 1, and 1 Eliz. c. 2. 'If any person or persons shall deprave or revile the most blessed sacraments, or the book of the Common Prayer, &c.' In the statute of 1 Eliz. cap. 1, and also of 5 Eliz. cap. 1. 'If any person or persons &c. shall extoll, &c. the power of the bishop of Rome, or of his see.' 13 Eliz. c. 1. 'If any person or persons shall bring in, or put in use any bull from the bishop of Rome, Agnus Dei, pictures, crosses, &c.' In the statute of 23 Eliz. c. 2. 'If any person or persons shall, with a malicious intent, speak any false or seditious news of the queen,' &c. In 27 Eliz. c. 2. 'If any person or persons shall harbour or contribute any money to the maintenance of any Jesuits, Priests,' &c. In all these acts (to pretermitt (*e*) many others), the words, 'any person or persons,' extend to peers as well as commons, as is resolved in the bodies and provisos of all these acts: yea, in the statute of 25 E. 3, c. 2. of Treasons (though a most penal law), the

(*d<sup>e</sup>*) Acts x. 3, 4. Rom. ii. 11. Eph. vi. 9. Col. iii. 25. 1 Pet. i. 17.

(*e*) See 25 H. 8, c. 3, 10, 13. 26 H. 8, c. 2. 32 H. 8, c. 4, 7, 9, 13. 5 Eliz. c. 9, 14, 15, 21, 22, 23. 8 Eliz. c. 2, 3, 4. 13 Eliz. c. 8, 13. 14 Eliz. c. 3. 1 and 2 Phil. and Mar. c. 3. 1 Eliz. c. 6.

(d) See Coke's 3 Instit. p. 34.

words are only, 'If a man do compass or imagine the death of the king; if a man do levy war against the king in his realm, &c. If a man counterfeit the king's broad or privy seal, or his money,' &c. Yet it hath been resolved without dispute in all times, and so agreed by sir Edward Coke, *Institute* 3. p. 4, 5, that this word, 'a man,' extends to both sexes alike, including women as well as men, peers as well as commoners, lords as well as peasants: yea, all ranks, callings, conditions of men who are subjects; and that this word Man, in the singular number only, extends to many men, to any number of men committing any of these Treasons jointly, as well as to a single man, or traitor, because it is a general law, made for the safety of the king's person, and the realm. Much more then must 'any person or persons,' in this statute, being both in the singular and plural number, and in common acceptation, a far more universal, general, and comprehensive expression than this of 'a man,' in 25 E. 3, c. 2, extend equally to all sorts, sects, and degrees of men, as well as it, and so to peers as much as it, and to peers as well as to commons, as it doth in the statutes of 25 H. 8, c. 22. 26 H. 8, c. 13. 27 H. 8, c. 2. 33 H. 8, c. 12, and 20. 5 E. 6, c. 11. 1 Mar. c. 6, and 2 Phil. & Mar. c. 9, 10, 11. 5 Eliz. c. 1. 13 Eliz. c. 2. 18 Eliz. c. 1. 23 Eliz. c. 1. 27 Eliz. c. 2. 3 Jac. c. 4, concerning treasons.

Secondly, My second argument to prove Irish peers within this statute, is, because Irish commons are within its verge, even for treasons committed in Ireland; as hath been adjudged in the fore-cited cases of Orouk, sir John Perrot, and Mac Mahone: for laws and law-givers being no respectors of persons, where the offences be the same, and there being no clause, word, or syllable in this statute extending to Irish commoners treasons, but which doth, may, and ought, by the self-same justice, reason, and equity, to extend to the treasons of Irish peers, (this statute making no distinction between the one and the other) and the commons of Ireland having as absolute a right and inheritance in their native privilege of being tried by their peers in Ireland, which yet is taken away by this act in case of treason, as the peers in Ireland have in their peerage, to be tried there by their Irish peers: We must not, yea, we cannot, in point of justice, distinguish between the one and the other, where the law itself makes no distinction: therefore, since the Irish commoner is undoubtedly within the words and scope of this act, to be tried at this bar by a Middlesex jury, the Irish peer (unless we will judge with respect of persons, and coin a distinction not warranted by this act) must be also tried in the self-same manner. The law is the same, the crime is the same, both in Macguire's and in Mac Mahone's cases; therefore the trial, and judgment too, must, in law and reason, be the same in both.

Thirdly, It will be granted me, without dispute, that if an Irish peer commit treason in any foreign parts, out of England and Ireland,

as in Spain, France, Flanders, Italy or Germany, he shall be tried in this court by an ordinary jury, if freeholders, and not by his peers in Ireland, by virtue of this act. Nay, if he commit treason in Ireland, and fly into England, he may, and shall be tried for that very treason, by an ordinary jury, at this bar (f); because by flying his country, and a legal trial there, he hath outed himself of the benefit of his peers. Therefore it extends to Irish peers, even for treasons done in Ireland, else they could not be triable here in any of these cases, which are granted on all hands to be law.

Fourthly, It is evident by the proviso in this act, that English peers committing any manner of treasons out of this realm, are triable for it in England, by virtue of this law, as well as English commoners, though they were not so by the common law. Therefore Irish peers committing treasons shall be within it likewise, and so triable here as well as Irish commons, else they should be in far better condition than English or Scottish peers, and quite exempted out of this act. Now the same words that bring English peers within this law, must of necessity look in Irish peers too, there being no clause which exempts or includes the one more than the other.

Fifthly, The very letter, intent, and scope of this act (as appears by the body of it, and likewise by the statutes of 26 H. 8, c. 13, and 5 and 6 E. 6, c. 11, to the same effect) was, to make all treasons done or committed out of England, by any person or persons whatsoever, triable in England, either before the justices in this court, or (g) before special commissioners in some other counties; but to be still triable within this realm, as the words 'all manner of treasons hereafter to be done, perpetrated, or committed by any person or persons out of the realm of England, shall be from henceforth enquired of, heard, and determined before the king's justices of his bench, &c.' clearly resolve in direct terms: therefore to make the treasons of Irish peers committed in Ireland, or elsewhere, triable here in England, as well as the treasons of English peers, or Irish commoners. And to send them back into Ireland, to be there tried by their peers, when once they are here in prison, and indicted in this court, by exempting them out of this act, contrary to the very letter and intent of the law, is to run point-blank against the very words and meaning of this law, and the law-makers: therefore he must, by this act, be tried at this bar, and that by an ordinary jury only, as I shall prove anon.

Sixthly, The very scope and sole purport of this act is not to make new treasons, or traitors, which were none before, but to bring real traitors only, for treasons formerly made, or hereafter to be made and declared treasons by the laws and statutes of this realm, to exemplary punishment in this kingdom, for the peace and

(f) See Coke's 3 *Instit.* p. 31.

(g) See 26 H. 8, c. 13. 1 E. 6, c. 11.

preservation of the king, realm, and the better execution of justice (the very life of laws), upon delinquents only of the highest rank, for the most transcendent crimes of high treasons, or misprision, or concealments of treasons, not for felonies, or petit treasons; which consideration must necessarily induce us, for the common good, to give it the largest, fullest, and most equitable construction that may be. Thus the judges, in former times, have always interpreted it, as appears by Dyer, f. 132. 298. Coke's 7 Rep. Calvin's Case, f. 23. a. his first Institut. on Littleton, f. 26. his third Institut. p. 24. and in Orouk's case, wherein the judges resolved, first, That the statute of 1 Mar. sess. 1. repealing all former treasons, but those within 25 E. 3. and of 1 and 2 Phil. and Mar. c. 10. enacting, 'That all trials hereafter to be had for any treason, shall be had and used only according to the due course of the common law of this realm, and not otherwise,' extends not to the taking away of foreign treasons, or their trials, by this law. And in Orouk's case, they extended it by equity beyond, and in some sort, against the letter of the law itself; for he standing mute, and refusing his trial, was thereupon condemned and executed for a treason committed by him in Ireland, though the words of the statute are, 'The treason shall be enquired of, heard, and determined before the justices of the king's bench, by good and lawfulmen of the same shire, where the said bench shall sit;' and the act speaks nothing at all of standing mute. But this being a public law for the common good, to bring traitors only to their trial and just punishment, his refusal to put himself upon his trial, was adjudged to be a determination and conviction of his treasons within the act; else any traitor, by standing mute, might evade and frustrate this good law. If then this statute may thus be construed by equity, and dilated beyond the words, to one who stands mute, for a treason done in Ireland; much more may it be extended to a treason by an Irish peer, who is fully within the words and intent of it, as I have already manifested: And it would be a most pernicious gloss which should either elude or nullify this beneficial public law.

Seventhly, It is clearly resolved in and by our parliaments, 13 E. 1. Proem. 13 E. 1. of Statute Merchants, 21 E. 3. rot. parl. n. 67. in the statute of 5 H. 5. ch. 6. and in divers of our law books, (h) that acts of parliament made in England, wherein Ireland is either specially named, or generally and necessarily included, do bind those in Ireland, both commoners or peers alike. This therefore being such a law, extending and binding those in Ireland, as hath been resolved in the fore-cited cases, it must certainly bind both the peers and commons of Ireland to a trial at this bar, for treasons done in Ireland, when the king and

kingdom deem it necessary or expedient to try them here in England.

Eighthly, The proviso in this act for trial of treasons done out of this realm, by peers within the same, extends only in positive terms to peers of this realm of England, because they only are peers within England, and so only triable by their peers, for foreign treasons within the same; not to peers of Ireland, who are no peers at all, nor triable by their peers within this realm of England; therefore this proviso extending only to peers of this realm, excludes all other foreign peers, whether Irish or Scots, from any trial by their peers in England, for treasons acted out of it.

Ninthly, There is very great reason why natural Irish peers and barons should be within the compass of this law as well as commoners, and rather they than any other foreign peers; because, as our (i) historians, the Irish annals, statutes, and our records do testify, ever since their conquest by king Henry 2. and submission to the kings of England, they have frequently (almost every year) in most king's reigns, broken forth into private, petit, or general rebellions and insurrections against the English, (as I could instance in sundry particulars) in which rebellions I commonly find a Macguire, a Mac-Mahon, and O'Neal, in the van, as ringleaders of all the rest, as they were in this last rebellion, wherein most of the native Irish peers and greatest septs have been deeply engaged as principal conspirators. Among other rebellions I find in story, and (which is more authentic) in the express statute made in the parliament at Dublin in Ireland, anno 28 H. 8. c. 1, (k) (but seven years before this law,) that Gerald Fitz-Gerald, Earl of Kildare, the Earl of Desmond, with divers others of the Irish peers and gentry, conspiring together to extirpate the English, and deprive the king of his sovereignty in Ireland, did send to the French king, the emperor, and bishop of Rome, for aid and assistance for taking the same land out of the king's and English possessions; and thereupon, with banners displayed, and great forces, traitorously invaded the king's dominions there, besieged the city and castle of Dublin, murdered the king's good subjects who withstood them, and resisted the king's forces sent from hence, &c. for which they were all, by this act, attainted of high treason. The like general rebellions have there broke forth sundry times, both before and since that act, but none so generally, dangerously, and bloodily, as this for which the prisoner at the bar stands indicted. The treasons, therefore, in Ireland, being commonly so frequent, so general, wherein most of the native Irish peers (and some of the English ex-

(i) Mat. Paris, a. d. 1250. Mr. Camden's Ireland, p. 110 to 143. The Annals of Ireland, in Mr. Cam. Britan. p. 154—201.

(k) See 1 E. 3. rot. Parl. n. 4, 5, 6. 6 E. 3. n. 11. 6 E. 3. Parl. 2. n. 3. 7 R. 2. n. 4. 13 R. 2. n. 2.

(h) 1 H. 7. Co. 7. Rep. Calvin's Case, f. 16, 17, 23. Coke's Institut. 1, p. 33; Mr. St. John's Argument at Law, at Strafford's Attainder, in Rushw. vol. 8, p. 698. (ante, vol. 3, p. 1504.)

traction too) were usually chief actors; there was very great reason, policy, and justice too, why such a law as this should be made to reach Ireland, and why, in such cases as these, (rebellions there being so universal, and most of the Irish nobility conspirators and parties in them) that these peers, and the chiefest conspirators, when surprized, should be presently sent over from thence into England, and tried there for their treasons.

First, To secure their persons from escapes and rescues, which might be there more easily procured, especially when and where the Irish rebels are masters of the field; as the statute of 17 H. 7. in Ireland, c. 14. resolves.

Secondly, To avoid a (*1*) failure of justice there, when by reason of the many Irish peers there out in actual rebellion, or by means of alliance of most other peers to them, or of the flight of others thence, or the employment of them in service, or places of trust, or by reason of the interposition of the rebel forces between them and the place of their trial there, a competent number of indifferent Irish peers, for a speedy trial, cannot be assembled with safety or conveniency in Ireland, to try a rebellious traitor by his peers there; which obvious defects are all supplied by this act.

Thirdly, To prevent all partiality and injustice in such cases, which might happen in trials by peers in Ireland, either by consanguinity, or alliance of the peer to be tried to the Irish peers who are to try him, or by confederacy of the triers in the same treason with the party tried; or through fear of mischief or revenge upon the triers, jury, witnesses, and judges, by the tried rebel's friends, kindred, and confederates, in case he should be condemned by them, and executed (none being so vindictive and bloody in this kind as the Irish). Upon all which weighty reasons there was a special cause why, both in justice, policy, and prudence, all Irish peers, who by public rebellion commit high treason in Ireland, should be sent over and tried here by ordinary juries, to prevent the fore-named mischiefs and failure of justice, and bring them to condign punishment. Now in this case here in judgment at the bar, all these recited reasons hold: for, first, most of the Irish peers were in actual rebellion when the prisoner was sent over: most of the English and protestant Irish peers there, either murdered, or forced to fly thence, or so dispersed and employed, that they could not assemble a competent number of indifferent peers to any place, with conveniency, to try him in Ireland. Secondly, the enemies and Irish rebels were then masters of the field in most places, the prisoner in danger to be rescued by force from them, or by treachery

likely for to escape out of their hands, and the times so troublesome, as would admit no leisure for such a trial. Thirdly, most of the Irish were allied to Macguire, or engaged with him in the self-same treason and rebellion; and so neither in law, justice, or prudence, fit or indifferent persons to pass upon his trial in this case of most public concernment. Fourthly, the judges, witnesses, and peers, that should try him there, would have been in extreme peril of their lives, and of exemplary public revenges from their confederate rebels, who threatened revenge, as appears by MacMahon's speech (Macguire's confederate) to the justices upon his first examination: "I am now (said he) in your hands, and you may do with me what you please; but I am sure, within few days I shall be revenged;" and by like words of revenge used by Owen O'Neil, in Flanders, so soon as he heard Macguire was apprehended. Fifthly, if he should now be sent back from hence into Ireland, to be tried, the rebels, and his party, are there so predominant, that scarce any witnesses, nor peers, nor judges either, would or durst there to appear openly against him; or else such means would be made to delay or elude his trial and execution, that by some device or other there would, questionless, be a failure of justice against him. Therefore, for all these weighty reasons, he may, and ought, by all rules of policy, equity, and justice, to be arraigned and tried only at this bar, by virtue of this act, which so clearly extends unto him; that so the blood of (*m*) above one hundred and fifty thousand innocent protestants, shed in Ireland, in less than four months space, by means of this rebellion, which cries aloud to heaven and earth for revenge against this great contriver and arch-promoter of it, may not go unrevenge in a way of public justice, to our eternal infamy. I have quite done with the second and main question, and proved an Irish peer to be within the statute, as well as an Irish commoner.

I shall now proceed to the last point, arising from the manner of this plea, that he may be tried by his peers, not expressing where or how, and intimating that he would be so tried here in England. It is briefly this: Admitting an Irish peer to be triable in England for a treason committed by him in Ireland, whether this doth not inevitably out him of his trial by Irish peers, and subject him to a trial at this bar by an ordinary jury, as well as an Irish commoner? And I conceive, without any scruple, affirmatively, that it doth, for these undeniable reasons:

1. Because Irish peers are peers only in Ireland, not in England, and cease to be such in judgment of law so soon as ever they arrive in England, both personally in themselves, and relatively to others, being here in judgment but mere esquires, not lords, and are to be sued as

(*1*) Upon which ground writs of error lie in the King's Bench in England, to reverse erroneous judgments in the courts and parliaments of Ireland, Coke's 4 Inst. p. 352. Mr. St. John's Arguments against Strafford, in Rushw. vol. 8, p. 696, 698. (ante, vol. 3, p. 1502.)

(*m*) Dr. Jones's, and other printed relations, concerning the Irish rebellion.

such, not as lords or peers, even as peers of Scotland, France, or Spain are, as is resolved and adjudged 11 E. 3. Fitzh. N. Br. 473. 8 R. 2. Process, Fitzh. 224. 20 E. 4. 6. Brook, Noame de Dignity, 49 M. 19 and 20 Eliz. Dyer 360. b. Coke's 7 Rep. f. 15, 16. Calvin's Case. Co. 9 Rep. f. 117. The Lord Sanquhar's Case in Point, and Coke's 3 Instit. p. 30. The prisoner then being no peer in England, it is impossible that he should be tried in England by his peers.

2. Because no such way of trial was ever yet heard of in any age, of any Irish or other foreign peer, tried here in England, either by English peers, or by his Irish or foreign peers; therefore such a trial shall not, nor can be had or admitted now.

3. Because neither the King's Bench, nor the commissioners before whom the statute limits these foreign treasons to be tried, nor yet the high steward of England (if any such should be created) have any power or jurisdiction to summon a jury of peers out of Ireland to appear before them here in England upon such a trial as this; neither are the peers of Ireland bound by any law to appear or attend as peers on any such service or trial here, being peers, and bound to serve as peers (which their patents express) only in Ireland, and no peers here: therefore a trial by his Irish peers here in England is an impossibility as well as an illegality.

4. Admit a jury of peers might be summoned and sent from thence, yet it would be a great delay of justice, it requiring a long time to procure a full appearance of peers thence; yea, a betraying of Ireland to the rebels at this instant, to send for so many protestant indifferent peers now from thence as might serve to try him here. Moreover, it would be an infinite expence, charge, trouble, besides the danger, by sea, to summon a jury of peers from thence; and if they failed to appear in England upon summons, as is probable they would, and lawfully might, they being not bound to it by any law, and so no sure certain to be set upon them for not appearing, nor legal means of coercion to compel them to come over upon such a trial, there should be a failure of justice for want of such a peerage: and therefore no such trial may or can be expected, which would elude and null this law.

5. The statute directs the trial of foreign treasons in express terms, to be before the judges in the King's Bench, or the commissioners appointed by the king in any county of this realm. Now no trial by English or Irish peers was ever heard of either in the King's Bench, or before such commissioners; but it always hath been, and ought to be, either in the House of Peers in Parliament, or before the lord high steward of England, as all former precedents accord; and 15 E. 3. c. 2. 1 H. 4. 1. 10 E. 4. 6. b. 13 H. 8. 12, Brook Treason, 29, 33, Coke's 3 Institute, c. 1 and 2, p. 28, 29, 30. 4 E. 3. rot. Parl. n. 1, 50 E. 3. rot. Parl. n. 21 to 31, 34. 7 R. 2, n. 15 to 24. 10 R. 2, n.

6 to 18, 11, n. 2, n. 6, 7. 14 R. 2, n. 14. 21 R. 2, n. 12 to 17, and Placita Coronæ coram Dom. Rege in Parl. n. 1 to 20. 1 H. 4, Plac. Coronæ in Parl. n. 1 to 11, Walsingham Hist. Ang. p. 402, 2 H. 4, n. 30, 31. 5 tl. 4. rot. Parl. n. 12, resolve: therefore no trial can be in this case by peers, either in this court, or before commissioners, by virtue of this act, or any other law.

6. This statute is introductive of a new way of trying foreign treasons, done out of this realm, by a jury within England; which by the rules of the common law could neither inquire nor take notice of any treasons or matters committed, perpetrated, or acted beyond the seas, is evident by the prologue of this act, the statutes of 26 H. 8, c. 13. 5 E. 6, c. 11, M. 2, and 3 E. 1, Coram Rege Rot. 56, Hereford M. 2 E. 2, Fitzh. Obligation 15, and Utlagary 18, Tr. 8 E. 4, Fitzh. Testament. 6. 6 E. 3. f. 17, 18, 27 Ass. 43. 41 E. 3, 19. 48 E. 3, 2, 3. 20 H. 6, 28, 44. 15 E. 4, 14, 15. 20 E. 4, Perkins, Sect. 121, 494, 737, Coke 4 Instit. c. 17, 1 Instit. f. 74, Stamford, l. 3, c. 14, Coke 2 Rep. 49, a. Long and Pecock's Case, 5 Rep. f. 107, a. 3 Inst. f. 48, 49. Whereupon it altering the common law in this particular, it outs all former doubts, and most punctually prescribes all the particulars and appurtenances belonging to the trial of them, from which there neither may nor can be any variation by law.

First, it appoints the place where they shall be tried.

1. In general, within this realm of England.

2. In particular, either in the King's Bench, wherever it sits, or in such county as the king by his commissioners shall assign. 2. The judges, before whom the trial shall be, are thus particularly described, the justices of the King's Bench, or such commissioners as the king shall appoint under the great seal.

3. The jurymen by whom they shall be tried are thus defined, *in terminis*, in the act, 'By good and lawful men (not peers or commons of Ireland) of the same shire, where the said bench of the king shall sit, if the trial shall be in the King's Bench; and if before commissioners assigned by the king in any shire of the realm, then by the good and lawful men of the same shire where the commissioners sit;' which is doubled (like Pharaoh's dream) to make it more certain; and likewise precisely enacted by the statutes of 26 H. 8, c. 13, and 5 and 6 E. 6, c. 11, in pursuance of this act.

4. The manner how the trial shall be is thus punctually specified: 'In such manner and form, to all intents and purposes, as if such treasons, &c. had been done, perpetrated, and committed within the same (n) shire where they shall be so inquired, heard, and determined, as is aforesaid:' which last words (with the very like in the statutes of 26 H. 8, c. 13, and 5 E. 6, c. 11, extending to our case) put an end to the point in question; for if the Lord Macguire,

(n) See Dyer, f. 31, 232, 298, 360. Coke's 7 Rep. f. 23, 11 Rep. f. 65.

now at the bar, had committed the treasons for which he is now indicted in Westminster, there is no doubt nor scruple of it, but he should have been tried by a jury of Middlesex, notwithstanding his peerage in Ireland; and he could neither have pleaded nor demanded his peerage, as is resolved expressly in Calvin's case, C. 7 Rep. f. 15, 16, and in the Lord Sanquhar's case, Coke's 9 Rep. f. 117, who was tried and condemned by an ordinary jury, for suborning Carliel to murder Turner with a pistol in England, though a peer of Scotland, because he was here no peer; and the fore-cited books are express, that the same law holds in case of a peer of Ireland. Since then this law expressly enacts, that the trial of all foreign treasons shall be by good and lawful men of the same shire where the King's Bench shall sit, in such manner and form, to all intents and purposes, as if the same treasons had been committed here in Middlesex, where the King's Bench sits; there neither may nor can be any other form of trial for the prisoner, nor in any other place, nor before any other judges, nor by any other jury, but such as this statute hath punctually defined, and that is by a jury of Middlesex, to all intents and purposes as if the treasons for which the prisoner stands indicted had been plotted and executed in Middlesex. Therefore, to admit him to a trial by Irish peers, and not by good and lawful men of Middlesex, or to send the prisoner back to Ireland, there to be tried by his peers, is to run quite counter and point-blank against this unanswerable clause of the statute, That he shall be tried by good and lawful men of the same shire where the King's Bench sits, to all intents and purposes as if the treasons had been there committed. And had they been there committed actually, as they are legally by the express purview of this law, it could never so much as be scrupled and made a quere, whether he should be tried by his Irish peers here, or sent over to be tried in Ireland for treasons acted there, after an indictment for them here found against him. In one word, statutes which prescribe new forms of trial in such a particular way as this act doth, are like letters of attorney, or licenses of alienation (o), they must be most strictly pursued, and not varied from in the least punctilio; as was resolved by all the judges of England, Hil. 21 Jac. in the Case of Penal Laws, Co. 7 Rep. f. 36, 37. Therefore no other form of trial ought to be admitted in this case than what the statute prescribes, and that is only by good and lawful men of Middlesex, not by Irish peers.

7. The proviso in this act puts a period to this case:

'Provided always, That if any the peers of this realm shall happen to be indicted of any such treasons, or other offences aforesaid, by authority of this act, that then after such indictment they shall have their trial by their

peers, in such like manner as hath been heretofore accustomed.'

From whence I shall observe these five particulars:

1. That treasons committed by English peers in foreign parts are triable here in England, within the very body and purview of this law. Therefore, by the self-same reason, law, and justice, treasons committed out of this realm in Ireland, even by Irish peers, are triable in England by this act, else Irish peers should be quite out of this act, and in better condition than English or any Irish commoners, who are clearly adjudged within it.

2. That trial by peers is saved by this proviso only to the peers of this realm; which both in the prologue and body of this act is expressly styled 'this realm of England.' But the peers of Ireland are no (p) peers at all of this realm of England, as is resolved in 11 Ed. 3, Brief 473, 20 E. 6, 4 Co. 7 Rep. f. 15, 16, and 9 Rep. Lord Sanquhar's case, f. 117, Co. 3 Inst. p. 30, and Dyer, f. 360, b. Therefore no ways within the compass, words, or reason of this proviso, but clearly secluded out of it, and so not triable by their peers. And this statute, prescribing a new way of trial for foreign treasons, not triable here by peers before, had excluded all English peers from trial by their peers, by the body of the law, as some conceive, had it not been saved to them by this special proviso: therefore certainly Irish peers, who are not provided for at all, and no peers in England, must necessarily be excluded from their peerage by it, upon their trial here.

3. The reason why this law doth save the trial by peers to peers of this realm only, and to no others (which, as some conceived, was not saved to them in cases of foreign treasons by the statute of 26 H. 8, c. 13, as appears by the Lord Gray's case hereafter cited), makes an end of the case in question, because peers of the realm of England are peers in every shire and county of England. Therefore, by the Great Charter of England, and all other acts confirming it, and the common law itself, they ought to be tried only by their peers within all counties and places of England; but Irish; Scotch, and foreign peers are no peers in any county of England, as the fore-cited books resolve. Now this statute enacting all foreign treasons to be triable not in Ireland, or any other his majesty's dominions, but in England only, it was necessary and convenient by this special proviso to save the trial by peers to all English peers to be tried for foreign treasons only in England, according to (q) Magna Charta and the Common Law, being their birth-right, because they are actual peers in all places of England, and may have English peers enough at hand to try them without delay upon all occasions. But Irish and other peers being no peers at all in England, and it being a thing improper to try them by English peers,

(o) 21 H. 7, Br. Alienation 9. 30 E. 3, 17. Br. Alienation, 23 and 30.

(p) Selden's Tit. of Hon. p. 837, 840, 841.

(q) Cap. 29. See Coke's 2 Inst. p. 43, 49.

being no real peers to them, and a thing impossible to try them here by Irish, or any other foreign peers, for the reasons formerly alleged, and this statute confining the trials within it only to England, it had been a direct contradiction and absurdity to provide that these foreign peers should be tried here by their foreign peers for treasons, and not by an ordinary jury, because they are neither peers themselves in England, nor others who should come hither from Ireland, or other foreign parts, who lose their foreign peerage as soon as they set foot on English ground, with relation unto England, where their peerage presently ceaseth.

4. The statute is, That the trial for such treasons, &c. shall be in such manner and form, to all intents and purposes, as if they had been committed in England. Now if English peers commit treason in England, they shall, by the statute of Magna Charta, cap. 29. (yea by king John's Charter, and by the common law long before, as sir Edward Coke proves in his commentary upon it, and I have at large demonstrated in my (r) plea for the lords and house of peers) be tried only by their peers, and not by any ordinary jury, by English but not Irish peers, as I have formerly proved. Therefore the ground of saving trial by peers to peers of England by this act, is an unanswerable argument to deny such a trial here to any peers of Ireland by Irish or English peers.

5. The last words of this proviso determine the case in question without more dispute: 'Provided always, That if any peers of this realm happen to be indicted of any such treasons aforesaid by authority of this act, they shall have such trial by their peers, in such like manner as hath been heretofore accustomed.' It being always the custom of England (s) since Magna Charta, and long before, in cases of treasons at the king's suit, to try all English peers in England only by their peers, and such a privilege as (t) Sir Edward Coke holds, they cannot waive if they would, as it was adjudged in the Lord Dacre's Case, Pas. 28 H. 8, and since in the earl of Castlhaven's Case, 7 Car. But on the other side it is most certain, that it hath never been accustomed heretofore, that Irish or any other foreign peers should be tried for any treasons here committed by English, Irish or any other foreign country peers within the realm of England; nay, no one precedent of this kind was ever heard of; and it is an impossible thing in point of law, as I have proved: Therefore no such trial by any peers can be once thought of or imagined for the prisoner or any other peer of Ireland, within the purview or proviso of this act.

6. I shall add further, *ex abundanti*, to put this case out of all question, that I have made some cursory search into most of the Irish

annals, histories, antiquities, statutes, upon this occasion, and I should have made a further inquisition had I enjoyed any vacant hours to do it, yet I cannot find so much as one precedent of any Irish peer tried in Ireland for treason, or any other offence, by his peers, before this statute of 35 H. 8, and I believe the prisoner's counsel cannot, (as indeed they neither did nor could) produce one example of such a trial there, by peers, before this law, nor any act of parliament in that realm before this statute concerning treasons, which provides, 'That Irish peers shall be tried by their peers, there being no such clause, or least hint thereof, to be found in the statutes of 18 H. 6, c. 2, 3, 10 H. 7, c. 13. 13 H. 8, c. 1. 28 H. 8, c. 1, 2, 7. which makes sundry offences treasons, and extend to and mention Irish lords and rebels by name, as well as commons; all and every of these acts leaving both the Irish peers and commons to the self-same trial by a Jury. And since this act I presume they cannot produce above one precedent, and that a very late one in case of treason, where an Irish peer was tried by his peers, and it was the case of lord Slane, much about twenty years since there tried and acquitted by his peers in Ireland, as I am informed; before which time it was then confessed by the judges there, that they never heard or read of any one such trial used in Ireland; and since it we have heard of no other trial there by peers to second it, but only of one noble lord, the lord of Valentia, viscount Norris, there extrajudicially condemned by mere martial law in a council of war, even in times of peace, by the earl of Strafford, A. D. 1635, but not executed, nor tried by his peers in a legal way; all their peers formerly being there either attainted by act of parliament, as is evident by the Irish statutes of 28 H. 8, c. 1. 3 and 4 Ph. and M. c. 2. 11 El. c. 1. 13 El. c. 6, 7. 27 Eliz. c. 1. 28 Eliz. c. 8, 9. 11 Jac. c. 4. 2 H. 6, rot. parl. n. 2, or executed by martial law, as soon as apprehended in the wars, or else slain in actual rebellion, or pardoned upon their submissions, without any trial for their treasons by their peers.

For attainders of Irish peers, and other traitors and rebels by act of parliament in Ireland, I find the earl of Kildare, with others, attainted for a treason and rebellion, much like this for which the prisoner stands here indicted in a parliament held at Dublin in Ireland, 28 H. 8, c. 1. Since this, in 11 Eliz. c. 1. Shan O'Neale, a bloody desperate rebel, was attainted by parliament after his death, (being hewn in pieces by the Scots) and the name of O'Neale extinguished. it being made high treason for any to assume that name; and I find a Mac-Mahon and Magwire forfeiting land among other rebels in that act; which largely sets forth the queen's title to Ireland. 27 Eliz. c. 1. James Eustace, viscount of Balinglas, was attainted of high treason for public rebellion against the queen. 28 Eliz. c. 9. I find John Brown, and near one hundred

(r) Page 202 to 307.

(s) See my Plea for the Lords and House of Peers, 202, 203, to 309, where this is largely proved; and p. 424.

(t) 3 Instit. f. 30.

more Irishmen, by name attainted of high-treason by this act for an open rebellion. In 11 and 12 Jac. c. 4. I find Hugh earl of Tyrone, Jury earl of Tirconnell, Cacunagh Magwite, MacMahon, and above twenty more chief Irish gentlemen, attainted of high-treason by this act, for their open rebellions. But for a trial of any Irish peer for any treason in Ireland by his peers, I can meet with no precedent as yet, but that of the lord Slane only, and shall be glad to be informed of any other to parallel it.

Indeed in the printed statute of 2 Eliz. c. 1, made in Ireland, for restoring to the crown the ancient jurisdiction over the state ecclesiastical and spiritual, and abolishing all power repugnant to the same, and in the statute of 2 Eliz. in Ireland, cap. 6, intituled, An act whereby certain offences are made high treason, I met with these two clauses concerning the trial of Irish peers for treasons only within these acts. "And if it shall fortune that any peer of this realm shall happen to be indicted of and for any offence that is made premunire or treason by this act, that then the same peer or peers so being indicted, shall be put to answer for every such indictment before such peers of this realm, of English blood (not Irish, mark it) as by the lord deputy, governor or governors, of this realm, shall be by commission appointed under the broad seal, and to have his and their trial by his and their peers; and to receive and have such like judgment upon the same trial of his or their peers, or making open confession of the same offence or offences, as in other cases of treason or premunire hath been used, or is used in other cases of high treason and misprision of treason;" which latter clauses, "as in other cases of premunire and high treason hath been used," and, "as is used in other cases of high treason, or misprision of treason," relate only unto those words, "to receive and have like judgment upon trial;" and so only to the judgment and sentence given in these new treasons and offences enacted by these acts, not to the manner of trial by peers; which is merely a new kind of trial never mentioned in any other Irish acts before these, and restrained only to the new treasons and premunires specified in these acts, in imitation of the (u) English statutes made in the self-same cases, which provide a trial by peers for our English peers; which was never heard of in any other acts of parliament in Ireland till these, and never practised that I read of in that realm, either before or since. To clear this up more fully, the statute of 11 E. 3, c. 4, makes mention of prelates, earls, and barons in Ireland, as well as in England: And the statute of 4 H. 5, c. 6, prohibits, "That any one of the Irish nation should be chosen to be an archbishop, abbot, or prior, within Ireland, because many of them, against a former act there made, had been made archbishops, bishops, abbots, priors, whereby they

became peers of the parliament in the same land, and brought with them Irish servants to the parliaments and councils there holden, whereby the privities of the Englishmen within the same land have been, and be daily discovered within it to the Irish people rebels to the king, to the great peril and mischief of the king's lawful liege people in the same land." And the statute of 10 H. 7, in Ireland, c. 16, enacts, "That the spiritual and temporal lords of the land of Ireland shall appear in every parliament holden in that land in their parliament robes, in like manner and form as the lords of the realm of England appear in the parliaments holden within the said realm, under pain of forfeiting 100s. to the king;" Which use of robes they had there for penury omitted by the space of 20 or 24 years. But there is no mention of any trial by their peers in these or any other English or Irish statutes, but those forfeited of 2 Eliz. c. 1 and 6. Yea the statute of 25 H. 6, in Ireland, c. 28, enacts, "For that there is a law established, That every lord that is called a lord of the parliament, in all pleas, personal as well as real, in which amerciaments do lie, shall be amerced 100s. to the great impoverishment of the said lords, forasmuch as their livings are diminished and wasted by war: That no lord of parliament shall be amerced from thenceforward in the said pleas, otherwise than other persons, notwithstanding any law made before to the contrary." The amerciaments therefore of Irish lords and commons being alike by this law, it is very probable their trials by jury were both alike, and that they were not tried by their peers.

Now the prisoner's counsel have pleaded in his plea, That Magna Charta gives the trial by peers in Ireland, and no other law but it; and that it was not accepted, received, confirmed, and used as a law in Ireland till the statute of 10 H. 7, and the words thereof, if it be confirmed by that act, are most clear in it, "That all statutes late made, &c. from henceforth be deemed, accepted, used, and executed within this realm of Ireland in all points;" and if it were made a law there by this statute 8 E. 4, c. 1. (which I rather believe) the words of that act are, "That from henceforth all other statutes and acts made by authority of parliament in England, be ratified, confirmed, and adjudged by authority of this parliament in their force and strength, from the 6th day of March." So as Magna Charta was not a general law in force, use, acceptance, or execution in Ireland, at least among the Irish, till 8 E. 4, or 10 H. 7, as is evident by these acts. Because I would leave nothing concealed or unanswered that might make for the prisoner's advantage, I must acknowledge that king Henry 3, in the first year of his reign, sent a roll of the liberties which his father king John and he had granted to this realm of England, unto Ireland, out of his special grace, by unanimous consent of all his lieges, and confirmed the same to all his spiritual and temporal lords and faithful subjects there, for their fidelity to him and his

(u) 1 El. c. 1, 6.

father, to them and their heirs for ever, as a signal badge of his favour, by this patent: (x) 'Rex, archiepiscopis, episcopis, abbatibus, comitibus, baronibus, militibus, et libere tenentibus et omnibus fidelibus suis per Hiberniam constitutis, salutem. Fidei tatem vestram in Domino commendantes, quam domino patrino nostro semper exhibuistis, et nobis estis diebus nostris exhibiti; volumus quod in signo fidelitatis vestre tam præclare tam insigniter Libertatibus regno nostro Angliæ à patre nostro et nobis concessis, de gratia nostra et dono in regno nostro Hibernie guardatis, vos et vestri in perpetuum: Quas distincte in rotulum redactas, de communi consilio omnium fidelium nostrorum vobis mittimus, signatas sigillo domini Gualonis apostolicæ sedes legati, et fidelissimi, nostri Willielmi Marescalli (y) rectoris nostri ad regni nostri, quia sigillum nondum habuimus; eandem processu temporis majorum consilio proprio sigillo firmandas. Teste apud Gloverniam 3 die Februarii;' he being (s) crowned but on the 28th of October before at Gloucester, where this patent bears date.

After which king Henry having ratified the Great Charter of Liberties in England, in the 9th year of his reign (printed in all our statute books, and in Coke's 2 Institute), in the 19th year he commanded it, or rather that of pat. 6 Johan. reg. m. 6, to be published openly in Ireland by his writ; (a) 'Rex, dilecto et fidei suo R. Burgo. Justic. suo Hiberniæ, salutem. Mandamus vobis firmiter præcipientes, quatenus certo die et loco faciatis venire coram vobis, archiepiscopos, episcopos, abbates, priores, comites et barones, milites, et libere tenentes, et ballivos singulorum comitatum, et coram eis publice legi faciatis Cartam dom. regis Johannis patris nostri cui sigillum suum appensum est, quam fieri fecit jurari a magnatibus Hiberniæ, de legibus et consuetudinibus Angliæ observandis in Hibernia. Et præcipiatis eis ex parte nostra, quod leges illas et consuetudines in Carta prædicta contentas de cætero firmiter teneant et observent. Hoc idem per singulos comitatus Hiberniæ clamarari faciatis et teneri prohibentes firmiter ex parte nostra, et super forisfacturam nostram ne quis contra hoc mandatum nostrum, venire præsumat, eo excepto quod non de morte nec de cattalis Hibernensium occasione nichil statuatur ex parte nostra citra quindecim dies à die St. Michaelis, anno r. n. 12, super quo respectum dedimus magnatibus nostris Hiberniæ, usque ad terminum prædictum. Teste meipso apud Westm. 8 die Maii, anno 12.'

In Coke's 3 Instit. f. 141, b. 4 Instit. p. 329, b. et in 18 H. 3, rot. par. m. 17, n. 21, there is mention made of 'consuetudines et leges regni nostri Angliæ, quas bonæ memoriæ dominus

Johannes rex pater noster de communi omnium de Hiberniæ consensu teneri statuit, in terra illa. Teste rege apud Winch. 28 die Octob.'

In the 13th year of Henry 3, all laws and customs of England were established in Ireland by this (b) patent: 'Quia pro communitate terræ Hiberniæ, et pro unitate terrarum, rex vult, et de communi consilio regni provisum est, quod omnes leges et consuetudines que in regno Angliæ teneantur in Hibernia teneantur, et eadem terra eisdem legibus subiaceat, et per easdem regatur, sicut Johan. rex cum ultimo esset in Hibernia, statuit et firmiter mandavit: Ideo volumus, quod omnia brevia de communi jure quæ currunt in Angliā, similiter currant in Hibernia sub novo sigillo nostro, &c. Teste meipso apud Woodstock, 19 die Septemb.'

The patent of king John, which this patent mentions, is that of Rot. Pat. 6 Johan. regis, m. 6, n. 17, never yet printed. 'Rex, &c. justiciariis, baronibus, militibus, et omnibus fidelibus suis, &c. Sciatis quod dedimus potestatem Justiciariis nostris Hiberniæ, quod Brevia sua currant per terram nostram et potestatem Hiberniæ, scilicet Breve de Recto, de feodo dimidiis militis, et infra; et erit terminus de morte aut post transfectionem Henrici patris nostri de Hibernia in Angliam. Et Breve de nova disseisina, et erit terminus post prima Coronationem nostram apud Cant. Et Breve de Fugitivis et Nativis, et ejus erit terminus post captionem Dublin. Et Breve de divisis faciendis inter duas villas, exceptis baronibus: Et ideo vobis mandamus et firmiter præcipimus, quod hæc ita fieri et firmiter teneri per totam potestatem nostram Hiberniæ faciatis. Teste meipso apud Westm. 3 Novemb.'

In the 41st year of his reign, clause 41 H. 3, m. 11, dors. I find this memorable writ, touching the confirmation and customs of England settled in Ireland, by assent of the prelates and great men thereof: 'Rex, thesaurario et baronibus de scaccario Dublin, salutem. Quia de assensu et voluntate prælatorum et magnatum terræ Hiberniæ dudum fuit provisum et concessum, quod eisdem legibus uterentur in terra illa quibus homines regni nostri utuntur in regno illo; et quod eadem brevia quoad terras et tenementa recuperanda currerent in terra illa, quæ currunt in regno prædicto, sicut nostis: et dicta provisio et concessio omnibus retroactis temporibus fuerint obtenta et approbata; miramur quamplurimum, quod sicut ex insinuatione venerabilis patris Thomæ Lismor. Episcopi accepimus, emanare permisistis ex cancellaria Edwardi filii nostri in Hibernia, contra consuetudinem obtentam et formam brevium in regno nostro usitatum,

(x) Pat. 1 H. 3, m. 3.

(y) King Henry being then a minor, and under his regiment.

(z) Mat. Paris Hist. Angl. p. 278.

(a) Clause 12 H. 3, part. 1, m. 2.

(b) Rot. Par. 30 H. 3, m. 3. Sir John Davis's Irish Rep. p. 37. Coke's 4 Instit. p. 330, 1 Instit. f. 141, b. Mr. St. John's Argument at Strafford's Attainder, in Rushworth's Col. vol. 8, p. 625. (Ante, vol. 3, p. 1501.)

‘breve subscriptum contra præfatum episcopum in hæc verba: E. illustris regis Angliæ primogenitus Vic. Waterford, salutem. Precipe Thomæ Lismor. episcopo, quod juste et sine dilatione reddat Waltero episcopo Waterfordi maneria de Archmordeglan, Kilmordri et Motha cum pertinentiis, quæ clamat esse jus ecclesiæ suæ, et in quæ idem episcopus non habet ingressum nisi per Alanum quondam Lismor. episcopum cui Grifinus quondam Lismor. episcopus illa demisit, qui in illa se intrusit post mortem Roberti quondam Lismor. episcopi, qui inde iniuste et sine judicio discessit Robertum quondam Waterford. episcopum, prædecessorem episcopi post ultimum reditum, &c. Quia vero dictum breve tam dissonum est, et contra leges et consuetudines in regno nostro obstantes, et formas brevium nostrorum ibidem approbatas, præsertim cum breve ingressus non transeat tertiam personam, nec ratione intrusionis in terram aliquam post mortem alicujus competat actio alicui de terra illa, nisi illi cui per mortem illam jus debetur in eadem: nec enim dicitur intrusor, qui jure hæreditario, vel ratione ecclesiæ suæ, succedit prædecessori suo in hiis de quibus idem prædecessor fuit seiscitus in dominico suo ut de feodo die quo obiit: Vobis mandamus, quod si dictum breve a cancellaria prædicta in forma prædicta emanaverit, executionem ejusdem brevis superse-deatis; reocantes sine dilatione quicquid per idem breve actum fuerit in curia præfati filii nostri. Tes: apud Wynd. 37 die Januar. Eodem modo scribitur Alano le Suche Justic. Hiberniæ, et Waleranno de Wellely, et sociis suis justiciariis itinerantibus, ut supra.’

In the fifth year of king Edward 3, rot. Pat. 5 E. 3, parte 1, memb. 25, it was enacted, in a parliament that year in England, among other things, ‘Quod una et eadem lex fiat tam Hibernici quam Anglicis, excepta servitute vicagiorum penes dominos suos,’ &c. by a parliament then holden in Ireland.

Yet notwithstanding all these patents, charters, acts, the benefit of the Great Charter, and of the liberties, laws, and customs of England, extended not to all Ireland, and the Irish therein dwelling, but only to such parts of Ireland as were reduced and divided into counties, and possessed by the English colonies, and to the Englishmen inhabiting in Ireland, and such Irish within the English pale as lived in due subjection and obedience to the kings of England, or were specially endenized by their patents to them, not to the Irish countries and colonies which were not reduced into counties, and under the obedience of the kings of England (amounting to more than two-third parts of Ireland in extent of ground) who had no benefit of the laws or liberties of England, but by special grants and charters of endenization from the kings of England, which some septs of the Irish and others purchased from our kings, as Sir John Davis proves at large in his Irish Reports, in the case of Tanistry, fol. 37, 38, 39, and the records there cited: to which

I shall add these following records, not mentioned by him, fully evidencing this truth. Claus. 37 H. 3, m. 15. Dora. ‘Rex Justic. Hiberniæ salutem. Monstravit nobis Mamorth Offerthierim, et Rothericus frater ejus quod antecessores sui et ipse, licet Hibernienses fuissent, semper tamen firmiter fuerunt ad fidem et servitium nostrum et prædecessorum nostrorum regum Angliæ, ad conquestum una cum Anglicis faciendum super Hibernienses. Et ideo vobis mandamus, quod si ita est, tunc non permittas ipsos Mamorth et Rodericum repelli, quin possint terras vendicare in quibus jus habent, sicut quilibet Anglicus. Quia si ipsi et antecessores sui sic se habuerunt cum Anglicis quamvis Hibernienses, injustum est, licet Hibernienses sint, quod exceptione qua repelluntur Ibernenses a vendicatione terrarum et aliis repellantur. Teste, &c.’

By this Record it is apparent that all Irishmen but those whose ancestors joined with our kings in the conquest of Ireland, and were loyal subjects to our kings, had no benefit of the king’s writs and laws to claim or recover lands in Ireland, in 37 H. 3.

Hereupon divers native Irishmen purchased several patents from our kings, granted out of special grace to enable themselves and their posterity to enjoy the benefit of the English laws in Ireland; for which I shall cite these few ensuing precedents, instead of many of like nature. Pat. 17 Johan. Reg. memb. 15, together with Pat. 12 E. 1. m. 11. ‘Pro diversis in Hibernia, quod uti possint legibus Angliæ in Hibernia. Rex omnibus ballivis et fidelibus suis Hiberniæ ad quos, &c. salutem. Volentes Giraldo fil. Johannis Hibernico, gratiam facere specialem, concedimus pro nobis et hæredibus nostris, quod idem Geraldus et liberi sui quos legitime procreavit, hanc habeant libertatem, quod ipsi de cætero in Hibernia utantur legibus Anglicanis; et firmiter inhibemus, ne quis eos contra hanc concessionem nostram vexet in aliquo, vel perturbet. In cujus, &c. T. Rege apud Carnarvan, 30 die Maij. Consimiles litteræ habet Margeria de Lessan, Henricus de Lessan, Petrus de Lessan, Andreus de Lessan, Benedictus filius Johannis, Ardmagh, Willielmus Heuke, Hibernici. In cujus, &c. Teste ut supra.’

Pat. 18 E. 1, m. 24. ‘Rex omnibus ballivis et fidelibus suis in Hibernia, ad quos, &c. salutem. Volentes Isamaiz filiz Ongilz, et Matildæ filiz Oragilz, Hibernicis, gratiam facere specialem, concedimus pro nobis et hæredibus nostris, quod eadem Isamaia et Matilda ad totam vitam suam hanc habeant libertatem, videlicet, quod ipsæ de cætero in Hibernia utantur legibus Anglicanis; et firmiter inhibemus, ne quis eas contra hanc concessionem nostram vexet in aliquo vel perturbet. In cujus, &c. T. Rege apud Westm. 19 die Junij, per ipsam regem.’

Pat. 19. E. 1. m. 20. ‘Rex omnibus ad quos, &c. salutem. Sciatis quod de gratia

'speciali, concessimus Willielmo filio Carmok. Clerico, quod ipse et omnes posterii sui imperpetuum lege et consuetudine Anglicana utantur in terra nostra Hibernie, ita quod ipsi per alias leges et consuetudines, per nos et ministros nostros quoscunque de cætero non deducantur contra voluntatem suam, sed quod ipsi in vita sua et morte de cætero libertate gaudeant Anglicana. In cuius, &c. Teste rege apud Asherurg. 23 die Jan.'

The like patent is granted Mauricio de Bre. Hibernico, Pat. 24 E. 1, m. 3. These Records, with Claus. 9, E. 3, m. 17. 'Rex dilecto et fideli suo Johanni Darcy, de Nevien, iusticio ario suo Hibernie, salutem. Ex parte quorundam hominum de Hibernia extitit supplicatum, Ut per statutum inde faciendum concedere velimus, quod omnes Hibernici qui voluerint legibus utantur Anglicanis ita quod necesse non habeant super his chartis aliquas a nobis impetrare. Nos igitur certiorari volentes, si sine alieno præiudicio promissis annuere valeamus, vobis mandamus, quod voluntatem magnatum terre ulius in proximo parlamento ibidem tenendo, super hoc cum diligentia per scrutari faciatis, et de eo quod inveneritis, una cum vestro concilio et advisamento nos distincte et aperte cum celeritate qua potestis, certificetis, hoc breve nostrum vobis remittentes.' which, compared with Claus. 5 E. 3, part 1. m. 25, 'Pro hominibus terræ Hiberniæ de lege Angliæ utenda in custodiis recuperandis,' &c. are an unanswerable evidence beyond contradiction, that the Great Charter, liberties, customs, and laws of England, granted to those of Ireland by King John, Henry 3, Edw. 1 and 3, extended only to the English subjects inhabiting Ireland, and to such Irish who lived in English counties in due subjection to the kings of England, or were by special charters of indenization enabled to enjoy the benefit of them; who were but few in consideration of the rest of the Irish nobility, gentry, and commons, retaining their ancient Breton laws, and would not submit to the laws of England, nor government of our kings, against whom they frequently rebelled, being reputed bitter enemies than rebels, and usually so stiled in the statutes of Ireland, till the statutes of 33 H. 8, c. 9. as appears by the statutes of 18 H. 6, c. 3. 25 H. 6, c. 4, 5. 28 H. 6, c. 1. 3 E. 4, c. 2. 5 E. 4, c. 6. 18 E. 4, c. 2. 10 H. 7, c. 9, 10, 17, 19. 28 H. 8, c. 11. and by Sir John Davis's Irish Reports, in the case of Tanistry, f. 139 the common laws and statutes of England being not universally received or established throughout the whole realm of Ireland, till after the statutes of 3 and 4 Phil. et Mar. c. 3. 11 Eliz. c. 9. and King James his Proclamation in the third year of his reign; or at leastwise till the statutes of 8 E. 4, c. 1. or 10 H. 7, c. 23. which established all the statutes made in England, concerning or belonging to the good of the same, only as to the Englishry, or English pale and counties, not to the Irishry, as the statutes of 17 H. 7, c. 8, 9, 10, 11, 13, 17, 19. 35 H. 8, c. 3. 5 Ed. 4, c. 3, 4, 5. 13

H. 8, c. 3. 28 H. 8, c. 15. made in Ireland, with other acts resolve, which the Lord Macguire confesseth in his plea, and his counsel cannot deny. Now the Lord Macguire being none of the English pale, or Irish septs, liege subjects to our kings, but of the Irishry, and professed enemies to our kings, as the Irish annals and statutes inform us: the statute of Magna Charta, and the laws, liberties, and customs of England, granted to the English and loyal Irish subjects in Ireland; and so this trial by peers could not extend to his ancestors till after the statutes of 8 E. 4, or 10 H. 7, and of 35 H. 8, c. 1, yes, after the statutes of 3 and 4 Ph. and Ma. c. 3. and 11 Eliz. c. 9. for reducing the Irishry into counties, and under the laws and statutes of England, to which they were not formerly subject. And from these patents of king John and Henry 3, fore-cited, and the statutes of 8 E. 4, and 10 H. 7, till 35 H. 8, cap. 1. no one precedent of any one Irish peer's trial by his peers in Ireland, in any case whatsoever, can be produced; therefore certainly there was no such trial known or in use in Ireland, before 35 H. 8, nor any precedent of it since, till one of late; and *una hirundo non facit ver.*

If then the peers of Ireland, before the making of this act of 35 H. 8, were never actually tried by their peers, for any treason done in Ireland, for aught can be proved, and there be no express act for any trial by peers there, for any treason, but only the act of 2 Eliz. c. 1, and 6, and that only for special treasons within those laws, which are none of those for which the prisoner stands here indicted; I may safely conclude, that this law of 35 H. 8, never intended to preserve to Irish peers a trial by their peers in Ireland, which kind of trial was never before had, used, or practised in that realm; and therefore the prisoner shall be tried by an ordinary jury at this bar, not by his Irish peers; because, if he were in Ireland (for aught appears yet to me) he should not be tried by his peers there: and in both these points, the book in Dyer, the only authority which seems to be the strongest against, is for me, the words whereof are these in English: The grand chancellor of Ireland moved this question to the queen's counsel, If an earl or lord of Ireland, who commits treason in Ireland, by rebellion, shall be arraigned and put to his trial in England for this offence, by the statutes of 26 H. 8, c. 13. 32 H. 8, c. 4. 35 H. 8, c. 2 or 3 E. 6. And it was held by Wrey, Dyer, and Gerrard, attorney-general, that he could not: Mark now their reasons, for he cannot have his trial here by his peers (which is a full resolution in point of my third question, agreeing with what I have endeavoured with arguments to prove, and is an unquestionable truth, which I submit to). Then it follows, Nor can he be tried here by any jury of twelve; mark the reason, not because he is a peer of Ireland, and therefore ought to be tried by his peers, and not by a jury, for that had been full against me, and it is now the only knot in question, but because he is

not a subject of England, but of Ireland, and therefore he shall be tried there; which reason, extending as well to an Irish commoner as peer, hath been since adjudged directly false, absurd, and against the law, both in Orourk's case, and in sir John Perrot's case, and since in Mac Mahon's case. And sir Edward Coke informs us in his Institutes on Lit. f. 261, that Wrey himself, in Orourk's case, where this opinion of his was vouched, did openly disclaim, that ever he delivered any such opinion as this, but ever held the contrary to it; and so it is a misreport in this particular: after which, the book concludes thus: And it is said, that the usage, to wit, in Ireland, to attainst a peer, is by parliament, and not by peers, which comes full in *terminis* to what I have last insisted on, and, I am certain, cannot be disproved. Wherefore this authority in Dyer, as to all that is truth and law in it, is wholly for me, in the reason of the law, and against me only in what hath been since adjudged to be no law. I shall close up all with a stronger case and authority than this in question, which will over-rule this case, and that was in Trinity\* Term, an. 33 H. 8, in the King's-bench: Edward lord Gray, immediately before having been lord deputy of Ireland, was indicted, arraigned, and attainted of high treason, by an ordinary jury in the King's-bench, in England, for letting divers rebels out of the castle of Dublin, and discharging Irish hostages and pledges, that had been given for the securing the peace of Ireland; and not for punishing one who said, 'the king was an heretick,' whilst he was lord deputy in Ireland: for these treasons, all acted and committed in Ireland, though as English peer, he was tried by an ordinary jury in England, by the statute of 26 H. 8, c. 13, ratified in Ireland by 28 H. 8, c. 7, fore-cited; which secluded him from his trial by peers, being not saved by these acts: therefore *a fortiori* shall these statutes, and this of 35 H. 8, c. 2, and 5 E. 6, c. 1, made since his judgment, exclude this Irish lord, being no English peer, from any trial by his peers.

Finally, the prologue of this statute, coupled with the body thereof, puts a period to this question, beyond all doubt or dispute. "Forasmuch as some doubts and questions have been moved, that certain kinds of treasons, &c. committed out of the king's majesty's realm of England, cannot, nor may, by the common laws of this realm, be enquired of, heard, and determined within this his said realm of England; for a plain remedy, order, and declaration, therein to be had and made, be it enacted, &c. That all manner of treasons, &c. committed by any person or persons out of this realm of England, shall be from henceforth enquired of, heard, and determined by the king's justices of his bench, &c. by good and lawful men of the same shire, where the said bench

shall sit and be kept, in like manner and form, to all intents and purposes, as if such treasons had been done within the same shire, where they shall be so enquired of, heard, and determined." The sole scope, end, and purpose then of the king and parliament in this act, being to take away all doubts and questions formerly moved in point of law, touching the trial of treasons done out of the realm, before the king's Justices of his bench, and commissioners in England, by a Jury, and to make and enact a plain remedy and declaration therein for the future in manner aforesaid, I humbly apprehend, there can be no doubt nor question now moved, whether this prisoner ought to be tried by his peers in Ireland or England, for this his most horrid treason committed out of the realm of England; since this statute so clearly declares and resolves the contrary, in most plain and positive words. The rather, because the king's patent, creating him baron of Eniskillen, under the great seal of Ireland, maketh him only a peer in Ireland, and gives him only a place and voice among the peers and nobles of Ireland, in the parliaments of Ireland, not in England, as he sets forth in his own Plea (c), in precise terms; as the patent made by king Henry the 4th, to Robert Bold, created him baron of Rathsaub in Ireland, and constituted him, "Unum dominum et baronem omnium et singulorum parliamentorum et magnarum conciliorum nostrorum in terra nostra Hibernie tenendorum; Habendum, tenendum una cum stilo, titulo, nomine, honore, loco et sessione inde sibi et heredibus suis masculis imperpetuum." And as king H. 8, (d) made Thomas viscount Rochford, by the self-same patent, both earl of Wiltshire "infra regnum nostrum Anglie, and earl of Ormond, "in terra et dominio nostro Hibernie" only, with several clauses of investitures; several habendums, and several creation-monies for each title and kingdom: And as the patents of all other Irish earls, viscounts, lords, and barons in Ireland, create and make them peers only in Ireland, not in England, as learned Mr. Selden informs us (e), and their very patents resolve in *terminis*; and therefore quite exclude the prisoner, and all other peers of Ireland, from any trial by their peers in England, either by the proviso or body of this statute, or their patents, which are point-blank against it.

And now, I hope, I have fully made good the point in question, with all the several branches of it, that this act extends to treason committed in Ireland; yes, to Irish peers, as well as to Irish commoners; and that there can be no trial at all upon it here of an Irish peer by Irish peers, nor in any place else within England, and that only, as the prisoner's case is by a Middlesex jury. And so I have finished my assertive part.

\* Mr. St. John's Argument at Strafford's Attainder, in Rushworth, vol. 8, p. 695, (ante, vol. 3, p. 1501.)

(c) Rot. Pat. 8 E. 4, in Cancel. Hibernie; Mr. Selden's Titles of Honour, book 2, c. 6. p. 840, 841. (d) Pat. 21 H. 8, part 2, 8 Decemb.

(e) Titles of Honour, book 2, c. 6, 7.

The first and grand objection is that which I meet with in the beginning of this prisoner's plea, the statute of Magna Charta, c. 29. "That no freeman shall be taken or imprisoned, or disseized of his freehold, &c. nor will we pass upon, or condemn him, but by the lawful judgment of his peers, or by the law of the land;" which law and statute is, among others, established for a law in the kingdom of Ireland, there to be put in ure at all times when need is, by the statute made in the parliament held at Droghedah in Ireland, in the tenth year of king Hen. 7, c. 22. and by virtue of these two laws he ought to be tried by his peers in, or of Ireland, in this suit against him by and for the king.

To which I shall give these satisfactory answers.

1. That the statute of Magna Charta, in its original creation and confirmation, was made and granted to the archbishops, bishops, abbots, priors, earls, barons, towns, and to all the Freemen of this our realm of England, and to them only, to be kept in our kingdom of England for ever, whence it is entitled, the Great Charter of the Liberties of England, as the prologue of it resolves. The first chapter thereof is peculiar to the church of England, viz. "That the church of England shall be free, and enjoy all her rights and liberties inviolable. We have also granted to our freemen of our realm of England, these liberties under-written, to have and to hold to them and their heirs, of us and our heirs for ever." So cap. 12. "The city of London shall have all her old liberties and customs, and all other cities, boroughs, towns, and the barons of the Cinque-ports, and all other ports, shall have all their liberties and customs." Cap. 35. "One measure of Wine, &c. shall be throughout our realm." Cap. 32. "All merchants, if they were not openly prohibited before shall have safe and sure conduct to depart out of England, to come into England, and to tarry in England, as well by land as by water, &c." In cap. 28. "All Weers shall be utterly put down between Thames and Medway, and throughout all England." And the conclusion, cap. 37, concerns the realm of England and Englishmen only. Neither doth the Charter of king John, nor that of the 11 of H. 3, nor 18 H. 3, m. 17. na. 21, nor of 80 H. 3, nor yet of 13 E. 1, cited in Coke's 4 Instit. p. 349 and 360, and in his Instit. on Littleton, f. 141, establish Magna Charta at least in relation to all the native Irish, but English alone, it being made particularly for the realm of England, and Englishmen; and therefore the prisoner pleads, it was settled there only as a law to be received and put in use, in respect of the Irish then living only in the English pale, and the king's loyal subjects, not of any Irish enemies in hostility by the statute of 10 H. 7, cap. 22, but not before: And so is sir Edward Coke's opinion, in express terms, in his 4 Institut. p. 351.

By which it is most clear, that from king

Henry 2nd's days, who first subdued Ireland, A. D. 1171, there were no trials in Ireland of any English or Irish peers, subjects, to our kings, for treason by their Irish peers, by virtue of Magna Charta, till after the statute of 10 H. 7, which was made but forty-six years before the statute of 35 H. 8, between which, and this later law, we read not of one trial of any Irish peer for treason there by his peers, nor yet since, that I can find, but only one of late by 2 El. c. 1, 6, till this very day; by which it is most apparent, that this trial by peers in Ireland, a privilege now insisted on, was never actually claimed or enjoyed by any peer of Ireland, especially by those in antient enmity and rebellion against our kings, stiled enemies in the Irish statutes, and English records, before the statute of 35 H. 8, and so it can be no prejudice, nor injustice at all, nor breach of Magna Charta, to out the prisoner of it.

2. It may be questioned upon very good reasons, Whether the statute of 10 H. 7, cap. 22, doth confirm this statute of Magna Charta in Ireland, or not? At least as to Irish peers, especially those of the old Irish blood, to whom it relates not, as I have proved in the point of trial by peers, and that upon these grounds.

First, Because the words of that statute are not, That all laws made in England, shall be confirmed, received, and executed in Ireland in all points; but, that "all statutes late made within the realm of England, concerning or belonging to the commonweal, [not peers], of the same, shall henceforth be deemed good and effectual in law, and received and executed in this realm of Ireland." Now Magna Charta being no law then late made within this realm, but made at least 271 years before it, can hardly (without much straining of the words beyond their proper meaning) be brought within the compass of this act; though sir Edward Coke, in his fourth Institute, p. 351, informs us, That Hil. 10 Jac. it was resolved by the two Chief-Justices and Chief-Baron, that this word 'late,' in this act, hath the sense of 'before,' and shall not be taken in its proper sense or meaning: So that the act, by this construction, against the sense of the words, extends to Magna Charta, and to all the acts of parliament made in England, not only 'late,' but even long 'before,' yea, many hundred years before this act; which, for my part, under the favour of those reverend judges, who thus interpret it, I hold still disputable, yea, erroneous, and no law at all, especially for these two reasons:

1. Because if any law introduced and confirmed Magna Charta, and the other laws of England in Ireland, it is the statute of 3 E. 4, c. 1, which confirms the statute made in England, in the parliament of 6 R. 2, c. 6, concerning Rapes, of which there was some doubt made, whether it extended to Ireland? and then concludes thus: "In avoiding all inconvenience that might happen, because of the

ambiguity of the said statute, Be it enacted, confirmed, and ratified by authority of the said parliament, That the said statute be adjudged and approved in force and strength, and may be of force in this land, from the 6th day of March last past; and that from henceforth, the said act, and all other statutes and acts, made by authority of parliament within the realm of England, be ratified, confirmed, and adjudged by authority of this parliament, in their force and strength, from the said 6th day of March." So that this law, if any at all, confirmed Magna Charta, and all the statutes made by authority of parliament in England, to be in force and use in Ireland, (yet only as to the English and Irish subjects under the king's obedience, and none else, as I have proved), and this statute of 10 H. 7, which confirms only the statutes lately made, most and doth, in truth and reason, relate only to the laws made in England since that statute of 8 E. 4, c. 1, not formerly there confirmed by that act: So that the prisoner's plea, That Magna Charta was confirmed by 10 H. 7, is but a mere mistake, and a void plea; neither are the judges here bound to take notice of this Irish act of 8 E. 4, c. 1, unless pleaded by the prisoner, being no law of this kingdom, and not binding here.

2. Because the forementioned charters of 6 Joh. 12, and 30 H. 3, &c. confirming the use of the laws of the realm of England in Ireland, did not extend to settle Magna Charta there, (at least-wise not as to the benefit of the natural Irish, but to the English and the Irish within the English pale alone) as is agreed by sir Edward Coke, and in a manner resolved by this act of 10 H. 7, as the words thereof, "From henceforth be deemed good and effectual in the law, and over that be used, accepted, and executed within the land of Ireland, in all points, at all times requisite," import. And if those charters extended not to Magna Charta, which are fuller than this act, I doubt this law will hardly do it.

3. Admit the law of 10 H. 7, extends to Magna Charta in some particulars thereof formerly used in Ireland, yet it reacheth not to the trying of Irish peers by their peers now in question, for these ensuing reasons:

1. Because trial of Irish peers by their peers in Ireland, was never used or heard of, nor is there any one instance to be found before or since Magna Charta, till 10 H. 7, which there settled that Great Charter for a law, nor from 10 H. 7, till 35 H. 8, nor since that, but of late, in one case only, about 20 years since, till this instant. Now what Littleton notes of the statute of Merton, Sect. 108. 'That no action can be brought upon that statute for a disparagement, for that since the making of it, it was never seen or heard, that any such action was brought upon it against the guardian; and if any such action might have been brought upon this matter, it will be intended, that some time it would have been put in use.' The like shall I say concerning

Magna Charta, and the trial of Irish peers by their peers in Ireland, That if the trying of Irish peers by their peers had been the common law of Ireland; or if the Magna Charta, and 10 H. 7, had established it there for a law, it would some time or other have been there put in use, and some peers there would have claimed and enjoyed this their privilege in point of trial: But since it was never yet in use there, for aught I find, nor any one can prove before 35 H. 8. I cannot deem it the common law, nor privilege of the peers of Ireland, but the peculiar privilege of our English peers, both by the common statute-law, and great charter of England, and no trial of right incident to Irish peers, as it is to English: therefore this kind of trial neither is confirmed to, nor intended to be conferred on Irish peers by Magna Charta, which is but a confirmation only of our (f) common laws of England, and no introduction of any new law here; and so should introduce no new law there, but confirm the common laws and customs there formerly used, and so the trial by peers is not there settled in respect of the Irish peers, by the statute of 10 H. 7. Now that which principally confirms me in this opinion, is the two special acts of parliament, made in Ireland in 2 Eliz. c. 1, and 6, already cited, which create a special form of trial of Irish peers, not by their peers there of Irish blood, but by their peers of that realm, of the English blood alone; only in the new treasons and premunures specified in, and created by those two acts, but in no other treasons; which clauses had been merely nugatory and superfluous, had the trial of Irish peers in Ireland, by Irish peers, been the birth-right, and known privilege of Irish peers, either by the common law there used, or by the custom of Ireland, or by Magna Charta, with this act of 10 H. 7, confirming it. It therefore never being the intent of this act, nor of Magna Charta, to grant any new privilege, or form of trial, to Irish peers, which they never formerly enjoyed, neither the one nor other will sufficiently support the prisoner's plea, nor indulge him any trial here or there by his peers of Ireland, at least of Irish blood, for so horrid a treason as this; which I hope is a satisfactory answer to this objection, since custom is the best expositor of all ancient laws, as sir Edward Coke declares in his Commentary on Littleton, Sect. 108, f. 81, b.

4. Admit the objection true, That Magna Charta extends to Ireland, by virtue of this act of 10 H. 7, so far as to give Irish peers, in Ireland, (though not of the English pale) a trial by their peers, which they had not before its confirmation there; yet then I answer, That this statute of 36 H. 8, c. 2, upon which the prisoner is arraigned, by making all treasons done and perpetrated in Ireland triable in England, when there is just occasion, (as now there is, in this time of a universal, horrid rebellion, and in sundry other fore-mentioned

(f) Co. 2 Inst. Proem.

pects) repeals this clause of Magna Charta, and deprives the prisoner of the benefit of his peerage, if at all conferred on him by it, and the act of 10 H. 7 since it is most certain, that statutes made in the parliaments of England, (being the supreme kingdom and court, to which Ireland, and its courts, are subordinate, and whose erroneous judgments in their high courts and parliaments there, were only reversible here in England, in the King's-bench and parliament of England, as is evident by Claus. 7 H. 3, par. 2, m. 10, and Claus. 29 E. 3, m. 12, 8 H. 6, rot. Parl. n. 69, Coke's 4 Instit. p. 356. Mr. St. John's Argument at law, at *Stratford's Att. Rushworth*, vol. 8, p. 696, 698. *Keilway*, f. 202, b. Br. Error, 127, *Fitz. Nat. Bre. f. 24, Co. 7 Rep. f. 18, a. Calvin's case*, do oblige those of Ireland, not only before, but ever since 10 H. 7, when Ireland is either particularly named, or generally included, as is agreed by *Rastal's Abridgment*, Title Ireland, 11 E. 3, c. 2, and 10 E. 3, ch. 8. 4 E. 4, ch. 1, 3 H. 7, ch. 8. 14 H. 4, *Rastal Parceners* 2, 27 E. 3, of the staple, ch. 1, 13. 14 Eliz. ch. 5. 1 H. 7, ass. 3. 3 H. 7, fol. 10. 2 R. 3, f. 12, and Coke's 7 Rep. *Calvin's case*, f. 17, 22, 23. 4 Instit. p. 35, it being so resolved, as to this purpose, by all the judges of England, in *Orourk's*, and *sir John Perrot's cases*, cited in *Calvin's case*, and adjudged in *MacMahon's case*, tried at this bar the last term, that this act of 35 H. 8, c. 2, binds those of Ireland, for treasons there committed, and makes them subject to a trial here, whether peers or commoners, as I have already proved.

5. It is unquestionable, That every commoner of Ireland hath as large, as full an interest in Magna Charta, the laws and privileges of England and Ireland, and as much right to be tried in Ireland, for treasons there committed, by an Irish jury, as any peer in Ireland hath in or by them to be tried there by his peers, these laws being no respecters of persons, and every man's birth-right alike, of commons as much as of peers, as the laws and great charter of England are; Magna Charta being as largely made, and as amply granted to the meanest freeman, as to the greatest peers of England and Ireland, as the prologue and 9, 14, 15, 19, 21, 22, 26, 27, 29 chapters thereof resolve.

Since then this act of 35 H. 8, chap. 2, doth, without all controversy, (as hath been resolved in the fore-cited case) deprive the commoners of Ireland of a trial in Ireland by Irish commoners, and subjects them to a trial by an English jury here, for treasons there committed; for which, by the common law, the customs of Ireland, and Magna Charta, before the statute of 26 H. 8, and this act of 35 H. 8, they could be no where tried, but only in Ireland, not in England, as is collected from the case of *sir Elias Ashburnham*, Tr. 18 E. 3, coram Rege, rot. 14, cited by *sir Edward Coke*, in his 4 Instit. p. 356, (the principal case that can be objected against me, which makes nothing to the purpose, being long before these sta-

tutes were made :) Therefore, by the self-same reason, it shall take away the trial of Irish peers in Ireland and England by Irish or English peers, for treasons perpetrated by them in Ireland, and subject them to a trial by an ordinary English jury at this bar, or before commissioners in any county of England, as I have already proved; which jury here are, in truth, peers to all Irish peers, being here no peers at all, but only commoners.

If it be objected, that this law of 35 H. 8, c. 2, cannot abrogate Magna Charta, all acts and judgments against Magna Charta being declared void, by 25 E. 1, c. 1, 2, 4. 28 E. 1, c. 1, and 42 E. 3, c. 1. therefore it shall not take away the trial by peerage from Irish peers:

I answer, 1. That you may, by like reason, object, that it cannot take away a trial in Ireland, by an Irish jury, from Irish commoners, seeing it cannot repeal Magna Charta, and the common law. But this objection is yielded, and adjudged idle, in case of an Irish commoner; therefore it is, and must be so in case of an Irish peer.

2. The objected statutes do make void and null all acts and statutes made against Magna Charta, before the parliaments wherein they were made; but they extend not at all to future real parliaments and their acts, subsequent parliaments having always had power to controul, alter, and abrogate precedent acts; yea, the very common law, and Great Charter itself, when inconvenient or defective, as all our books accord: therefore *sir Edward Cook*, in his 4 Institute, p. 42, resolves, and proves at large, by 11 R. 2, c. 3. 5 rot. Parl. n. 22, 48, 49. 1 H. 4, c. 3. 2 H. 4, c. 22. 21 R. 2, c. 16. 1 H. 4, n. 48, 70. 144. 21 R. 2, n. 20, 21, 36, 37, 85, 86, 89, 90, that 'acts, (yea, and oaths) against the lawful power of subsequent parliaments, that they shall not repeal such and such laws (though mischievous or unjust) bind not at all, and are merely idle: for 'eodem modo' 'quo quid constituitur dissolvitur'; those who have power to make any laws, having as great, as full a power to controul, alter, or repeal them, when they see cause and necessity for it; as you may read in *Rastal's and Poulton's Abridgements of Statutes*, and the statutes at large, repealing former acts; and how often Magna Charta hath been altered, supplied or (*h*) repealed, in some particulars, in and by our parliaments, since its making, by subsequent acts, both by prescribing, creating new imprisonments, forfeitures, corporal punishments, fines, executions, treasons, capital offences, customs, and imposts, not then known, or different ways, or places of trial, not then in use, in cases of foreign treasons, and the like, by a jury in England, not then usual, but since confirmed by the statutes of 26 H. 8, c. 13. 28 H. 8, c. 25. 33 H. 8, c. 27. 35 H. 8, c. 2. 5 and 6 E. 6, c. 11, contrary to, or (*i*) dif-

(h) See *Horn's Mirror of Justices*, p. 314, 315.

(i) See An exact Abridgment of the records p. 372, 879, 380.

ferent from Magna Charta, and the common law, 2 E. 6, c. 24, is so well known to all lawyers, that I will not spend breath to prove it.

3. I answer, that this act of 35 H. 8, doth both alter, and in some sort, repeal Magna Charta, and the common law, as to the point and place of trying foreign treasons in England itself, as to English peers and commoners, to whom alone the great charter was first granted, they being not triable in England, by jury or peers, for any foreign treasons, by the common law, or great charter. Therefore, *a fortiori*, it must both alter and repeal the common law and great charter, as to Irish subjects, for whom the Great Charter was never originally made, nor yet directly confirmed to them by 10 H. 7. but only implicitly and doubtfully at most, as I have proved.

4. I answer that this act of 35 H. 8, doth no ways abrogate or alter Magna Charta, in truth or reality, but rather ratify and confirm it, in the form and manner of this trial, though not in the place: for Macguire being only a peer in Ireland, but not in England, every freeman of England, that shall be impannelled to try him, is, in truth and law, his peer here. And this act, enacting that he shall be tried, not by martial law, or the judges themselves, but by good and lawful men of the shire where the King's-bench shall sit, who are his equals and peers in England, and saving the trial by peers to every peer of this realm, after his indictment found by jury. This way and form of trial, by jury in England, being then and now the law of the land, is no contradiction or repeal at all, but a direct pursuit and confirmation thereof, according to its letter and meaning. And so much in answer to this grand objection, wherein I have been over-tedious, but shall recompence it with brevity in the remainder.

The second objection (a mere branch of the former) is this:

That if Irish peers should be triable by an ordinary jury within this law, for treasons done in Ireland, this might prejudice the whole nobility of Ireland, who, by colour of this act, might be sent for out of Ireland, and tried here for treasons, misprisions, and concealments of treasons there committed, and so quite deprived of their birth-right of trial by their peers, which would be of dangerous consequence.

I answer, 1. That I have manifested, that this trial by peers was never deemed, claimed, nor enjoyed in Ireland, as a privilege, by Irish peers, nor ever used or practised in that land before this act, and but once claimed since, and that in Ireland; therefore it cannot be intended, that this statute, or the makers of it, ever imagined to save this manner of trial by peers only to Irish peers, which they never enjoyed, nor so much as once claimed or possessed before the making of it. Neither can it be any injury or injustice to deprive them of that now, they never heretofore claimed, used, or enjoyed, as their privilege, or birth-

right, being not indubitably settled on them by any law that I have seen: but only in some special cases of treason, since 35 H. 8, whereof this is none, by the late acts of 2 Eliz. c. 1 and 6, when as this privilege is taken from them, not by a bare-strained exposition or implication, but by this express act of parliament made long since for the common good and safety of England and Ireland, not yet repealed.

2. This objection, with as great or greater strength and colour, might be made for all the commons of Ireland, (far more numerous and considerable than their peers) they being deprived by it of trials by Irish juries in their native country than for Irish peers alone; which trial here against Irish commons, was never of late excepted against, this law having been so often adjudged to reach to them: therefore there is no colour to exempt Irish peers out of it.

3. This pretended prejudice to Irish peers, in point of trial by their peers, is solely in cases of high treason, or misprision and concealments of it, and no other, the statute extending to no crimes, but these alone therefore the mischief is not great in general; and no Irish peers, I presume, but such who have traitorous or disloyal hearts, will deem it a disparagement, or injustice to them, to be secluded of a trial by their peers, only in these cases of high-treason; and if others, who are professed rebels and traitors, murmur at it, (as none else will) we need not much regard it, nor prefer their pretended privilege, before our own kings, kingdoms, religions, yea, Ireland's safety and welfare, in bringing them to a speedy trial and condign punishment for their treasons here in England, by virtue of this law.

4. Even by the very common law, before this act, treasons committed in Ireland by peers or commons, were triable before the marshal of England, in England itself, as is evident by the parliament roll of 2 H. 6, p. 9, (k) where John lord Talbot, being the king's lieutenant in Ireland, accused James Buttler, earl of Ormond, of certain treasons (there particularly recited) by him committed in Ireland, before John duke of Bedford, constable of England, in his marshal's court; which accusations the king, by the advice of his parliament, did discharge and abolish, to appease the differences between them; upon which else he might have been proceeded against, though an Irish peer, without any trial by his peers (see Coke's 4 Instit. p. 123, 124.) Therefore *a fortiori* this special act of parliament may subject Irish peers to a trial by a substantial English jury in England, for treasons done in Ireland, since triable for them here before its making even in the marshal's courts.

5. This statute doth not simply take away the trial of all treasons committed in Ireland, from thence, only it makes them all triable here, when the king, state, and parliament shall see

(k) See An exact Abridgment p. 567, 568. Coke's 4 Instit. 123, 124.

just cause or occasion for trial of them here, as now they do in these times of general rebellion there, when the rebels are so predominant, and the times such, that no safe, fair, or indifferent trial of this traitor, can be there had or expected: and seeing the law and common reason will inform every man, that the king and state will never be at the cost and trouble to send for traitors and witnesses out of Ireland, to try them here, but upon a most just occasion, and urgent necessity, to prevent either a failure or delay of justice, in case of horrid treasons and rebellions: and no Irish peer, who hath any loyalty in his heart, or reason in his head, will deem it a dishonour or prejudice to the whole Irish peerage in general, or the traitorous peers, sent hither to be tried, in particular to be outed of a trial by Irish peers, in such cases of necessity, and expediency only; it being better and safer for this realm, and Ireland too, that these native Irish peers, who have been proved to break out into actual rebellion, in all ages, (as this prisoner's ancestors have done, as much, or more than any, his (1) grandfather being the first man that broke forth in Tyrone's rebellion) should be subject to trials for the same, by ordinary English juries here and outed of their peerage, than that such arch-traitors and rebels, as the prisoner and his confederates are, (guilty of the effusion of many thousands of Protestants and Englishmen's bloods) should escape uncondemned, or be executed by martial law. And our law, in this case, which concerns the safety of two kingdoms at once, will rather suffer a particular mischief, especially to rebellious peers, than a general inconvenience to both realms, and all loyal subjects in both.

6. Though the trial of all English and Irish peers, by a legal indictment, presentment, and jury of their peers alone, and not by martial law or commissioners themselves alone, be an essential, fundamental right and privilege, for the security of their lives and estates, which our parliaments, in all ages, have been very curious to preserve, and not to alter; yet the trial of peers by peers alone, (not by a jury of other freemen) for the most part, (if rightly considered) is rather a mere punctilio of honour, than matter of real privilege or benefit to peers; and by intendment of law and common experience, a fair and legal trial, by the oaths of twelve honest, substantial, indifferent English gentlemen, or freeholders, to whom the prisoner may take all sorts of lawful challenges by law (m), which shall be allowed, if there be any just cause of suspicion of partiality, injustice, consanguinity, &c. besides his peremptory challenge of thirty-five jurors, without cause, (which challenges, (n) Cook affirms, shall not be admitted, or granted, in case of trial by peers) it being the usual, an-

cient (o) trial, in all cases between the king and ordinary subjects, between man and man, peers and commoners, both in all civil and criminal causes whatsoever, it is, and will be every way as just, as beneficial to a peer, in point of law, as a trial by twelve peers, upon their honour only, (p) without oath: and the exchange only of the form of trial, by twelve indifferent English gentlemen of quality, upon their oaths, for twelve Irish peers of English blood, nominated and appointed only by the king, or his (q) lord deputy of Ireland, upon their honours, without oath, in this case of necessity, can be no injustice, injury, or prejudice to the Irish peers in general, nor yet to the prisoner in particular: the rather, if we consider,

1. That every indictment, by which an English, or Irish peer, is, or can be tried, must first be proved before a grand jury of commons, as this very statute prescribes, and found by them upon oath, not by a jury of peers, which is a kind of preparatory trial of a peer by jury, without which there can be no proper trial by peers, as is resolved, Coke's 3 Institute, p. 28, 30, 31, 32, and 1 H. 4, 1.

2. That in cases of appeal (r) brought by a

(o) See Fitzh. Brook, Ash, Title jurors, Trial Inquest.

(p) 1 H. 4, 2. 27 H. 8, 23. & 13 H. 8, 11, 12. Brook's treason, 29, 33. 10 E. 4, 6. Coke's 3 Instit. p. 28, 29, 2 Inst. p. 49.

(q) 2 Eliz. c. 1, & 6.

(r) Mr. Pryune in his preface to this argument says, that errors themselves in the courts of Ireland, with other grievances, could not antiently be redressed in the parliaments thereof, but only in England, till 29 Ed. 3, as is evident by this memorable hitherto unprinted record made for relief in such cases. Crook's 1 Rep. m. 14 Car. p. 511, 512.

Claus. 39, E. 3, m. 12. 'De erroribus corrigendis in parliamentis tenendis in Hibernia; rex, justiciario et cancellario suis Hiberniæ; salutem. Ex parte nonnullorum fidelium nostrorum communitatis terræ nostræ Hiberniæ, nobis est graviter conquerendo, monstratum, ut cum ipsi dampna et gravamina quamplurima à magno tempore susinuerint ex hoc, quod ipsi terras et tenementa sua in manum nostram per ministros nostros terræ prædictæ, cum nomine districtiōnis, cum ex causa transgressionis, sive alienationis sine licentia nostra factæ, voluntarie et absque casu rationabili capta, extra manus nostras, licet rite et processu debito inde penes vos et alios de consilio nostro in partibus illis, juxta legem et consuetudinem terræ prædictæ prosecuti fuissent recuperare non possent. (See Pat. 8, Johan. regis, m. 1, 2. Pat. 9, Johan reg. m. 4, n. 26.) Et etiam ex hoc, quod errores qui in recordis et processibus placitorum coram justiciariis nostris et aliis curiis et placitis in eadem terra, quæ recordem habent, habitis, et in redditionibus judiciorum et placitorum eorundem intervenisse prætenduntur in Parliamentis in eadem terra corrigi nequeunt, nec

(1) See Cambden's Ireland, p. 111. 120, 121. 199.

(m) See Stamf. l. 3, c. 7. 7 H. 7, 12. Brook's challenge, 217. Fitz. Stratham's and Brook's Abridgment, and Ash's table, title challenge.

(n) See Coke's 3 Inst. p. 27.

common person for murder, rape, robbery, or the like, and likewise in case of a premunire against an English peer, where his life is not brought into question, he shall not be tried by his peers, but by an ordinary jury as other men; trial of peers by peers being only in cases of indictments for treasons or felonies at the king's suit, and no other: as is clear by the statute of Magna Charta, ch. 29. Neither will we pass upon him, or condemn him, without the lawful judgment of his peers, &c. the words only of the king, not of the commons:

‘*alias justitia inde fieri sine remedio in Anglia querendo; propter quod, quidam propter labores et expensas circa præmissa oppositas ad maximum miserium et inopiam deducuntur, et quidam omnino exheredati existunt; unde idem fideles nostri nobis cum instantia supplicarunt, ut super præmissis remedium congruum apponi faciamus. Et quia videtur nobis et consilio nostro durum esse et grave, quod conquærentes super assæcutione justitiæ de injuriis sibi illatis in partibus prædictis, taliter absque remedio fatigerentur; per quod pro quiete, et indemnitare populi nostri in terra prædicta sub nostro regimine existentis, cui in exhibitione justitiæ sumus debitores; ordinavimus, quod de omnibus terris et tenementis in terra prædicta per justiciarios, Esceatoros, seu quoscunque alios ministros nostros, sub sigillo nostro in manum nostram captis, illis qui pro eisdem terris et tenementis extra manum nostram debito et justo processu coram vobis prosequi voluerint, super hoc plena justitia secundum legem et consuetudinem terræ nostræ Angliæ, et dictæ terræ nostræ Hiberniæ fiat, quibuscunque mandatis nostris sub magno vel privato sigillo nostro Angliæ, vobis aut aliis ministris in terra prædicta ante hæc tempora directis, non obstantibus. (See 2 E. 3, c. 8. 18 E. 3, Stat. 3. 20 E. 3, c. 1, 2 claus. 5 E. 3, part 1, m. 27. 1 R. 2, n. 96. 2 R. 2, n. 51. Claus. 20 E. 3, part 1, dors. 13.) Et quod ad prosecutionem omnium et singulorum qui conquæri voluerint errores in recordis vel processibus coram aliquibus justiciariis, seu aliis ministris prædictis, intervenisse, rotuli eorundem recordorum et processuum in parliamentis nostris in eadem terra tenendis, per justiciarios seu ministros, coram quibus recorda et processus illa fuerint, deferantur; et ibidem eadem recorda et processus diligenter recitentur et examinentur, et errores si quos in eisdem invenire contigerint, debite corrigantur. Et ideo vobis mandamus, quod ordinationem prædictam in terra nostra prædicta teneri, et partibus conquærentibus plenam et celerem justiciam fieri faciatis in forma prædicta, quibuscunque mandatis vobis aut aliis in terra prædicta ante hæc tempora in contrarium directis, non obstantibus. Ita quod aliquis materiam non habeat nobis pro defectu justitiæ, super casibus prædictis, de cætero conquærendi. Teste rege apud Westm. 30 die Augusti. Per ipsum regem et consilium.’*

In this our books are express in point, all cited in Coke's 2 Institute on this very chapter of Magna Charta, ch. 29. in his pleas of the crown, or 3 Instit. c. 2, p. 30, 31, and 20 Ed. 4. 6, b. Now this case in question concerning not only the king, but the whole kingdom of England and Ireland, and those many thousands of common persons whose innocent blood hath been shed in Ireland by him and his confederate rebels, crying out for vengeance and justice against him without delay; he may thereupon be justly tried by an ordinary jury of commons, as well as in case of an appeal of murder brought by a common person.

3. Peers of Parliament, even of this realm, not by inherent nobility and birth-right, but only in right of their baronies, which they hold in *auter droit*, as archbishops, bishops, abbots, priors, and the like, shall not be tried by their peers for treasons, or felonies at the king's suit, but only by an ordinary Jury; as archbishop Scroope of York, Crammer archbishop of Canterbury, (s) Adam de Orilton, or Tarlton, bishop of Hereford, Mark, bishop of Carlisle, Fisher bishop of Rochester, and others were tried, 3 Ed. 3, f. 6, Kelway's Reports, f. 181. Stamford's Pleas of the Crown, f. 135. Crompton's Jurisdiction of Courts, f. 12, 19. Hall's Chron. 6 H. 4, f. 25, Co. 3 Inst, f. 36. Now if these very English peers, to whom Magna Charta was immediately granted by name of archbishops, bishops, abbots, being the first persons mentioned in the prologue and ch. 1 and 29 of this charter, shall be outed of their peerage in these cases of indictment at the king's suit, though within the very letter of Magna Charta, because they are no peers of England by blood or birth-right, but in right of their churches, then, *a fortiori*, Irish peers shall be deprived of their peerage by this special act, who are not within the letter or intent of Magna Charta, never made for them, but for English noble blood. And if it be neither injustice nor injury, nor inconvenience, to deprive these ecclesiastical English peers of a trial by peers in cases of treason or felony at the king's suit, though within the letter of Magna Charta, and to try them by an indifferent jury of freeholders; it cannot be reputed any injustice, injury, prejudice, or inconvenience at all now to out this Irish peer of his peerage here, where he is no native peer, for such a horrid treason as this.

4. Irish peers are no peers at all in England; upon which account and reason if they commit treason here, they shall be tried by an ordinary jury: Therefore to try them only by freeholders, not by peers, in England, can be no injury nor dishonour to their peerage, unless it were in Ireland where they are peers; and yet have been seldom or never hitherto tried there by their peers, as I have proved.

5. The very statutes of Ireland itself, made by the peers and commons thereof to prevent

(s) Goodwin's Catalogue of Bishops, p. 252, 233. 605, 606.

many mischiefs by thieves, murderers, and rebels in that realm, do deprive both the lords and commons there of any legal trial at all both for their lives and estates too; witness the statutes 28 H. 6, c. 1. 3 et 5 E. 4, c. 12, and expose them to the judgment, slaughter, and plunder of particular men, in some cases, authorizing "all manner of men that find any thieves robbing, breaking up houses by day or night, or going or coming to rob or steal, having no faithful man of good name and fame in their company, in English apparel, to take and kill those thieves, though peers, and cut off their heads, without indictment or jury, and seize their goods, without any impeachment of the king, his heirs, officers, or any other, for which they are to receive a sum of money from every plow-land and person of estate within the barony where they shall slay and behead such thieves." And 25 H. 6, c. 4, and 5. "If any Englishman shall have any hair or beard upon his upper lip like the Irish, it shall be lawful for every man to take their goods, as Irish enemies, and to ransom them as enemies: and if any Irish enemies received to the king's allegiance, shall afterwards rob, spoil, and destroy the king's liege people, it shall be lawful for every liegeman that may meet with him afterwards, to do with him, and his goods and chattles, as to enemies who were never liege, and to ransom them at their free will, without any impeachment of the law." And ch. 6. "If any men, except knights and prelates, shall wear gilded bridle, peytrels, or other harness, that it shall be lawful to every man that will to take the said man, his horse and harness, and to possess the same as his own goods, without indictment or legal trial." All which would be monstrous in England. Therefore it is much more legal and just, and no injury at all, to try the prisoner, an arch-rebel, in England (t), in the

(t) Mr. Prynne in his preface to his argument says, I shall here insert one pertinent record, to manifest that the trying of Irish malefactors in England, the binding them to appear, the recording their defaults, and giving judgment against them for not appearing here for murders, robberies, and felonies, committed or acted by them in Ireland, is no novelty (having omitted it in my argument), it being in use in the ninth year of king John, as this patent manifests. 'Rot. Pat. Ann. 9 Joh. Reg. m. 4, n. 46. Rex. M. filio Henrici, Justiciario Hibernie, salutem. Mandamus vobis, quod deduci faciatis secundum judicium comitis Dublin, Galfredum de Marisco et alios qui rectati sunt de incendio, et roberia, et morte hominum, et aliis rebus que pertinent ad coronam nostram, unde eis dies datus est coram nobis in Anglia, a die sancti Michaelis ad 15 dies, ad quem non venerunt, nec pro se responsales miserunt, et absentiam suam die illo attornatis eis in defaultam. Et ipsos deduci faciatis secundum judicium predicti comitis de vita et membris et obsequiis, et vadiis, et plegiis. Teste meipso apud Theokesbury, 12 die Novembris.'

time of war and combustion in Ireland, for his treasons there perpetrated, by an indifferent, honest, lawful, English jury, upon an indictment found by the grand inquest, than thus to kill or behead such malefactors in Ireland, and seize both them and their goods as enemies, and ransom them at pleasure, without trial, jury, or indictment, and not only to indemnify but reward those that do it, by laws there made by the English and Irish themselves; which will answer all objections, and wipe off the least shadow of injustice in this case and trial.

The third objection is this, That if Irish peers had been within this law, there being so many rebellions in Ireland since its enacting, we should have had some precedents of Irish peers here tried by jury ere this; but there is no such precedent extant; therefore certainly Irish peers, for treasons perpetrated in Ireland, are out of this act.

To this I answer, 1. That no Irish peers have been tried by their peers in Ireland for treasons since this act; ergo they are within it.

2. That this argument is merely fallacious, and non-concludant; for the reasons why no Irish peers have been tried here since this law by virtue of it, is not because they were not deemed within it, but for other reasons.

1. Because most of the Irish peers who have been in actual rebellion since this law, were (u) either actually slain in the wars, or fled the kingdom, or else were received into grace, and pardoned before trial upon their submissions; or else attainted and executed by act of parliament, or by martial law in Ireland. And by these means only avoided their trials here.

2. Because some Irish rebels, as great as Maguire, or any of their peers, in power and estate, have been heretofore tried and executed for treasons in England by virtue of this law, though brought over-hither from Ireland against their wills; as Orourke and sir John Perrot of old, and Mac-Mahon the last term; and the trials of these three here are direct precedents in point, and good warrant by this very act for the trial also of this Irish peer, as I have proved.

3. The statute is not very ancient, yet still in as full force as ever; and if this be the first precedent of an Irish peer that came judicially in question here in England, to be tried upon it since its making, it is no argument he is out of this law, but rather an inducement to make him a leading precedent to those rebellious peers of that nation, who have been the ring-leaders of the ordinary commons there in this grand rebellion, there being no precedent, judgment, nor solid reasons against it; yea some judgments in case of Irish commons, and many unanswerable reasons, for it.

The fourth objection is, The opinion of the book in Dyer, f. 360, 1, forecited, recited in Compton's Jurisdiction of Courts, f. 23, a. and Mr. St. John's argument at law at Stafford's attainder, That an Irish peer cannot be tried

(u) See the Annals of Ireland, and Mr. Camden in Ireland, p. 121 to 200.

here in England for treason done in Ireland, neither by his peers nor by a jury; because he is no subject of England.

To this I have already given an answer, and shall here only add, 1. That the only reason given in the book hath been since several times adjudged to be no reason at all nor law by all the judges of England, a subject of Ireland being a subject of the king of England in all places, as is adjudged in Calvin's case, and that Wrey disclaimed any such opinion delivered by him as is there reported. Therefore the reason of this opinion being adjudged erroneous, and no law, the opinion itself grounded on it must needs be so too; the rather, because the opinion there cited was upon a case casually put and moved out of court by way of discourse, without study or argument, and suddenly delivered only by Dyer and Gerard (since Wrey disclaimed it), but not given upon any cause actually depending or debated and argued in court. 2. That it is a full authority for me, both because it determines there can be no trial of an Irish peer by his peers in England but only by a jury; and that in Ireland itself peers are not used to be tried by peers, but attainted by act of parliament; therefore an authority point-blank against the prisoner's plea.

The fifth objection is, Orouk's case; which in Judge Anderson's own book of reports is put thus: Whether Orouk, an Irish subject, and no peer or baron of Ireland, might be tried by this act here in England for treasons committed in Ireland? Which words 'nient esteant un peer ou baron de Ireland,' in the putting of the case, seem to intimate, that in that case the opinion of the judges was, That an Irish peer was not within this act.

To which I shall return this brief answer, That this clause, Not being a peer or baron in Ireland, in the putting of that case, was only a description of the quality of his person, he being no peer or baron of that realm, not any point in or part of the case, there being not one syllable in the whole debate or argument of it, by way of admission, or otherwise, that an Irish peer was not within this act: and in this very case the judges resolved the book in Dyer to be no law, and Wrey disclaimed any such opinion of his therein reported, as Sir Edward Coke's Institutions on Littleton, fol. 261. b. record.

The sixth objection is this (intimated in an Order of the Lords House) That this may much concern the peers of England; for this law for trying foreign treasons is enacted in Ireland; and so, by colour of it, English peers may be sent over into Ireland, to be tried there by a jury of Irish commoners, for treasons done in England, as well as Irish peers sent thence to be tried by ordinary juries here in England for treasons committed in Ireland.

I answer, 1. That there is no such law extant in Ireland, that I can find, among all their printed statutes; so as this is a vain surmise.

But, 2. If there were any such law there,

yet England, being the supreme realm to Ireland, may make laws in the parliament here to bind the Irish peers and commons; but the parliament in Ireland, being a (x) subordinate realm to England, never yet did, nor can make any laws at all to bind any English peers or commons for things done in England, until the rebels there shall be able to conquer England (which I hope they never shall) as we have conquered them. Therefore we need not fear any such obliging laws of theirs, or the trial of English peers in Ireland. So as this vain fancy is quite out of doors, and the lords themselves, upon conference with the commons, have been fully satisfied that this case no ways concerneth the peers of England, whose trial by their peers is by direct proviso saved to them in this act, and therefore cannot come in question, or be taken from them by pretence of any such law established in Ireland: whereupon they have reserved their order, which seemed to give some colour for this objection.

Pat. 48 H. 3, pars 1. m. 8. I find this memorable record: 'Rex, &c. omnibus salutem. Cum secundum consuetudinem hactenus in Hibernia obtentam, utlagati in regno nostro Angliæ pro utlagatis in Hibernia haberi non consueverunt, et Gregorius le Sommer, ratione utlagati in ipsum promulgatæ in regno nostro Angliæ, nuper captus fuit in Hibernia et in Angliam reductus et imprisonatus; nolimus quod fidelibus nostris Hiberniæ aliquid præjudicium ex hoc in posterum gravetur. In cujus, &c. Teste rege apud Turrim London, 26 die Junii.' If Englishmen, outlawed in England, could not by the law and custom of Ireland be taken upon a *capius utlagatum* in Ireland, or reputed as outlawed persons there, as this patent resolves, much less can they there be tried for any treasons acted in England by colour of this law, nor can our English peers be there tried for treasons here by an Irish jury.

A seventh objection, which I have heard made by some, is as vain and absurd as the former: That if Irish peers be within this act for treasons done in Ireland, then by the same reason peers in Scotland might be sent for and brought into England, and there tried by an ordinary jury by virtue of this law, for treasons done in Scotland; which would be a great prejudice to the peers of Scotland, and the privileges of that kingdom.

I answer, 1. That this act extends not to any treasons of Scots lords or commons committed or acted in Scotland, and triable there, though it reach to Irish lords and Ireland.

1. Because this act was made long before the Union betwixt England and Scotland, by 1 Jac. c. 2. 3 Jac. c. 3. 4 Jac. c. 1. and 16 Caroli; whilst that Scotland was under the absolute and immediate power of its own kings, and not of the kings of England; and so it cannot extend to them.

(x) See Croke's Rep. p. 264, 511, 512.

2. Scotland, although the (y) kings of it have often done homage to the kings of England in ancient times (as their sovereign lords) was still an absolute, independent kingdom in this respect of being subject only to and governed by its own parliaments and laws; but not subordinate to nor governed by the laws or parliaments of England, which never bound them heretofore, nor now, as they did and do Ireland; their laws and statutes and ours still continuing different. Therefore this act neither did nor could bind the Scots peers or commons in point of trial here for treasons committed in Scotland, as it binds the Irish (still subject to our laws and parliaments) for treasons done in Ireland.

3. The very acts of pacification (z) between both kingdoms, and the solemn league and covenant passed this parliament here and in Scotland too (which do specially reserve the trials of all traitors and delinquents of their kingdom to their trial and judicatory only of their own parliaments and realms), have for ever provided against this vain pretence, and secured not only all Scottish peers, but commoners too, against any trials here by virtue of this act for treasons done in Scotland; therefore I shall give it no further answer.

The last objection I can think of is this: That in every case of treason or felony new made by statute, the lords of parliament in England shall have their trial by their peers saved, notwithstanding the statute provides not for it by express words: so that provisos of trial by their peers inserted into them in such cases are but idle, and, *ex abundanti*, because it is provided for both by the common law, and by Magna Charta itself, c. 29. and so was it adjudged in the case of the lord Hungerford heretofore, and in the earl of Castlehaven's case of late for buggery, upon the statute of 25 H. 8, c. 6. Stanford's Pleas of the Crown, f. 152, 153, and Crompton's Jurisdiction of Courts, f. 29. Therefore the trial of Irish peers by their peers shall be likewise saved to them within this act, though it be not expressed, as well as the trial by peers is to English peers by express proviso.

I answer, first, That this rule holds generally true in all cases of new treasons and felonies where the offences only are made capital, or punishable according to the ancient, usual, and ordinary proceedings of law, and the manner of the trial of them left at large, and not precisely limited how and by whom they shall be tried; as they are in the objected cases upon the statutes of 25 H. 8, c. 6. and 5 Eliz. c. 17. concerning buggery, where the words are, "That this vice shall be adjudged felony, and that such order and form of process shall

thereupon be used against the offenders, as in cases of felony at the common law, and that the offenders being thereof convicted by verdict, confession, or outlawry, shall suffer pain of death," &c. Which words, without the least contradiction, stand as well with trial of peers who are guilty of it by their peers alone, as of commons by a jury, they being both according to the order of our common law, and a verdict by peers is as properly styled a verdict in law, as a verdict by jury; witness 1 H. 4, 1. and Coke's 3 Inst. c. 2. p. 30. But in the statute of 35 H. 8, there is no creation or introduction at all of any new treasons, but only an introduction of a new form and way of trial for treasons formerly made and declared as such, then done, or hereafter to be committed out of this realm, and that new form of trial, precisely limited in all particulars, and especially enacted to be by an ordinary jury, except only in case of our English peers: therefore this statute comes not at all within the objection, because it particularly defines the place where, the judge before whom, the juries by whom, with the whole form and manner how such foreign treasons shall be tried, with all other circumstances of the trial, and expressly prescribes, 'That all but English peers indicted for foreign treasons shall be tried by good and lawful men of the shire where the king's bench or commissioners sit. Therefore to alter this form of trial, precisely prescribed by this statute, by introducing a new trial by Irish peers, is to run quite cross against, elude, and repeal this statute, as I have argued and proved at large.

I have now quite done with my Argument of this new untrodden case; and I hope therein sufficiently manifested, that this plea of the prisoner is invalid, and such as ought to be over-ruled in point of law: and therefore as he hath been sent for over from Ireland, by the wisdom and justice of our parliament, and by the lords, justices, and council there transmitted hither, to receive a just and speedy trial at this bar for his bloody treasons, which there (in respect of the rebels power, tumults in that realm) he could not conveniently undergo; so I humbly pray on the behalf of the king, kingdom, parliament, and our whole English nation, to all which he hath been such a capital traitor and enemy, that this plea of his may presently be over-ruled, and himself brought to his speedy trial, judgment, and execution, for his unparalleled treasons, and the blood of those many thousands of innocent English protestants shed in Ireland upon this occasion, which cries for justice and execution against him without further delay; the rather, because *nulli differemus justitiam* is one clause of that very act of Magna Charta, ch. 29, which he hath pleaded in bar of his trial, of which I pray both he and the whole kingdom may now enjoy the benefit, by his undelayed trial and execution too, in case he shall be found guilty of the treasons for which he stands indicted; of which there is little doubt, since so fully confessed by himself in a writing under

(y) See Hov. p. 545, 546, 550. Walsingham Hist. Ang. p. 48 to 56. Mat. Paris Hist. Ang. p. 417, 433, 666, 667. 29 E. 1. Rot. Claus. dors. 10 claus. 33 E. 1. dors. 13. scedula claus. 34 E. 1. dors. 10 claus. 10 E. 3. dors. 9.

(z) 1 Jac. c. 2. 3 Jac. c. 3. 4 Jac. 1.

his own hand; and we are ready to make them good against him, as we have already done against his confederate Mac-Mahon, by the testimony of a cloud of honourable, pregnant witnesses, in case he shall deny it.

After two Arguments at the bar on both sides of this case, justice Bacon argued it himself, and delivered his Opinion and Judgment against the prisoner's Plea, that though he be a baron of Ireland, yet he was triable for his treason by a Middlesex jury in the King's Bench, and outed of his prerage, by 35 H. 8, c. 2. Which Judgment was approved by this Order of both houses of parliament:

Die Lunæ, 10 Februarii, 1645.

“Ordered by the lords and commons in parliament assembled, That the said houses do approve of the judgment given by Mr. Justice Bacon, in over-ruling the plea of the lord Maguire, and of the manner of the trial by the indictment of high treason in the King's Bench: and the judge is hereby required to proceed speedily thereupon according to law and justice.—John Brown, Cler. Parl. Henry Elsing, Cler. Parl. D. C.”

Upon which, on Monday, Febr. 10, 1645, he was brought from the Tower of London to the King's Bench bar, and there arraigned; where putting himself upon his trial, he challenged twenty-three of the jury, which appeared, peremptorily: whereupon a Distringas was awarded to the sheriff of Middlesex to return Quadrageinta Tales the next day; of whom he challenged twelve more peremptorily: and being tried by twelve of the residue returned (against whom he had no legal exception nor challenge), he was upon his own confessions and pregnant evidence of fifteen witnesses, persons of quality, found guilty of the treasons for which he was indicted; and thereupon Febr. 11, was adjudged to be drawn to Tyburn, and there hanged by the neck, and cut down alive, and then his bowels to be taken out, and there burnt before his face, his head to be cut off, and his body to be divided into four quarters, and then to be disposed as the parliament shall appoint. Which was accordingly executed the 20th of February.

At the end of the Argument Mr. Prynne says thus:

To fill up the vacant pages of this sheet, I shall annex this one Record, and also one Irish act, being both very pertinent to my Argument.

Pat. 1, E. 1, m. 20, Hibernia.

“Venerabili in Christo patri eadem gratia Midden episcopo, et dilectis et fidelibus suis Mauricio filio Mauricii justiciario suo Hibern. et Magistro Johanni de Saumford, esecutori suo Hibern. salutem. Cum defuncto jam celebri memorie domino H. rege patre nostro (cujus anime propicietur altissimus) ad nos regni Angliæ gubernacul. et terræ Hibern. dominium pertineant, ob quod prælati, comites, et proceres, ac communitas regni nostri nobis tanquam domino suo ligio et regi fidelitatis jura-

mentum et omnia alia quæ nobis ratione coronæ et dignitatis regis ab ipsis fieri et præstari nobis, in absentia nostra, poterunt plenarie et sine omissione aliqua prompto et libenti animo præstiterint: ac archiepiscopi, episcopi, abbates, priores, comites, barones, milites, libere tenentes, ac tota communitas terræ nostræ Hiberniæ nobis tanquam regi et domino suo ligio consimile sacramentum fidelitatis præstare teneantur. Dedicimus vobis potestatem recipiendi nomine nostro fidelitatem ipsorum. Ita tamen quod si vos omnes interesse nequiveritis, tunc duo vel unus vestrum qui præsens fuerit nichilominus plenariam habeat potestatem recipiendi nomine nostro fidelitatem ipsorum in forma prædicta. Et ideo vobis mandamus, quod fidelitatem prædictam nomine nostro recipiatis, prout melius videbitis expedire. In cujus, &c. Dat. per manum W. de Merston Canc. apud Westm. 7, die Decembris.”

33 H. 8, c. 1, made in Ireland\*.

An Act that the King and his Successors shall be Kings of Ireland.

“Forasmuch as the king our most gracious dread sovereign lord, and his grace's most noble progenitors, kings of England, have been lords of this land of Ireland, having all manner of kingly jurisdiction, power, pre-eminences, and authority royal, belonging or appertaining to the royal estate and majesty of a king, by the name of lord of Ireland, where the king's majesty and his noble progenitors, justly and rightfully were, and of right ought to be, kings of Ireland, and so to be reputed, taken, named, and called, and for lack of naming the king's majesty and his noble progenitors kings of Ireland, according to their said true and just title, stile, and name, therein hath been great occasion that the Irishmen and inhabitants within this realm of Ireland, have not been so obedient to the king's highness and his most noble progenitors, and to their laws, as they of right and according to their allegiance and bounden duties ought to have been. Therefore, at the humble pursuit, petition, and request of the lords spiritual and temporal, and other the king's loving, faithful, and obedient subjects of this land of Ireland, and by their full assents, be it enacted, ordained, and established by this present parliament, that the king's highness, his heirs and successors, kings of England, be always kings of this land of Ireland, and that his majesty, his heirs and successors, have the name, stile, title, and honour of King of this land of Ireland, with all manner of honours, pre-eminences, prerogatives, dignities, and other things whatsoever they be, to the estate and majesty of a king appertaining and belonging: and that his majesty, his heirs and successors, be from henceforth named, called, accepted, reputed, and taken to be kings of the land of Ireland, to have, hold, and enjoy the said stile, title, usa-

\* The Stat. of Ireland printed at Dublin, 1621, p. 183.

jeaty, and honours of the king of Ireland, with ~~and every~~ such offence shall be adjudged and deemed high-treason; and the offenders, their aiders, counsellors, maintainers, and abettors therein, and every of them, being lawfully convicted of any such offence, by presentment, verdict, confession, or proofs, according to the customs and laws of this said land of Ireland, ~~shall suffer pains of death~~, as in cases of high-treason, and also shall lose and forfeit unto the king's highness, and to his heirs, kings of this realm of Ireland, all such his manors, lands, tenements, rents, reversions, annuities, and hereditaments, which they had in possession as owner, and were sole seized of in their own right, of, by, or in any title or means, or in any other person or persons had to their use of any estate of inheritance, at the day of any such treason and offences by them committed and done. And that also every such offender shall lose and forfeit to the king's highness, and to his said heirs, as well all such estates of freehold, and interest for years, of lands and rents, as all the goods, chattels, and debts, which they or any of them had at the time of their conviction or attainder, of, or for any such offence; saving alway to every person and persons, and bodies politic, their heirs, successors, and assigns, and to every of them, other than such persons as shall be so convicted or attainted, their heirs and successors, and all other claiming to their use, all such right, title, use, interest, possession, condition, rents, fees, offices, annuities, commons, and profits, which they or any of them shall happen to have, in, to, or upon any such manors, lands, tenements, rents, reversions, services, annuities, and hereditaments, which so shall happen to be lost and forfeited, by reason and occasion of any of the treasons or offences above rehearsed, any time before the said treasons or offences committed or done.

174. Proceedings upon a Charge for Breach of the Trust reposed in them by the Parliament, preferred against Mr. HOLLIS and Mr. WHITELOCKE by the Lord Savile:\* 21 CHARLES I. A. D. 1645. [Whitlocke's Mem. 6 Rushw. 177.]

THE history of this obscure transaction is thus given detachedly by Whitlocke:

March 19th, 1645.

The lord Savile left the Oxford party, and came to London; he was staid by the Guards, and this day examined by a Committee of the Lords, of the grounds of his coming in, and was committed to the custody of the black rod.

March 31. The lord Savile, in regard he hath not given any satisfaction to the Parliament, for his coming from Oxford hither, but rather many grounds of suspicion, that he came to do ill offices, was ordered speedily to depart the city, and all other the Parliament's Quar-

ters and garrisons; and to betake himself to the king, or whither he pleaseth within one week; after which time, if he stay within the line of communication, or the Parliament's Quarters, he is to be taken and proceeded against, as one adhering to the enemy.

April 21. The earls of Holland, Thanet, Monmouth, Westmorland, and the lord Savile, took the oath appointed by the Parliament, for such as come in to them, before the Commissioners of the Great Seal.

July 2. Mr. Gourden, a member of the House of Commons, presented to them a Letter from the lord Savile, with a Paper inclosed in it, and desired, That they might be read, and after some debate they were read: The Letter was expressing "his affections to the

\* He had been created earl of Sussex by the king in the preceding year.

Parliament, to whom he had come from the king and submitted himself, and taken the oath enjoined; in observance whereof, and of his duty to the Parliament, under whose protection he was, he held himself obliged to discover to them what he knew concerning two of their Members, who had done contrary to their trust, and to the prejudice of the Parliament in the matters contained in the inclosed Paper."

This Paper set forth, "That Mr. Hollis and Mr. Whitelocke being persons well affected to the king, and to his cause, were nevertheless two of the Parliament's Commissioners lately sent to Oxford to his majesty with Propositions from the Parliament for peace: That they being at Oxford did contrary to their trust, and to the prejudice of the Parliament, treat and advise with the king, and some great lords about him, namely, the earl of Lindsey, the earl of Southampton, and others, about the King's Answer to those Propositions, and did give a Paper in writing, what they advised the King's Answers should be: That their advice in the said Paper was followed by the King, and some of the very words thereof were made use of in the King's Answer, and that both before and after that time, they held intelligence and correspondence with the king and his party at Oxford."

Much other matter was in the Paper to the like effect, and upon the reading of it, divers of the house were very high, and moved, That Mr. Hollis and Mr. Whitelocke might make a present Answer to this Paper, or Charge, as some called it.

Mr. Hollis presently in his place made his Answer to the matter of the Paper, and therein advisedly and suddenly confessed more than he needed to have done, but denied any intelligence or correspondence by him with any of the King's party.

Mr. Whitelocke was not in town this morning, and knew nothing of this business; but after Mr. Hollis had spoken, Mr. John L'Isle stood up and acquainted the house, that Mr. Whitelocke being then absent, if they pleased he would undertake to give him notice to attend the house the next day, which was ordered.

But some were not satisfied therewith, and they fiercely moved, "That this being a charge of High Treason against two of their Members, in whom the offence was greater than in others, that they would proceed with equal justice; and that both Mr. Hollis and Mr. Whitelocke might be committed to the Tower, Mr. Hollis who was present to be sent thither, and a warrant to apprehend Mr. Whitelocke and to carry him thither also."

Upon this sir William Lewys stood up, and with as much vigour on the other side, said, "He could not wonder at the justice of those who would commit a man to the Tower before he was heard, and the other after he had fully answered that which they called a Charge; That he could not admit it to be a Charge, but a scandalous and libellous Paper against two

worthy members of the house, who, they all knew, had served the Parliament faithfully, and to the utmost hazard of their lives and fortunes: And because they had done so, and were so capable of doing further and more service to the Parliament, therefore one of their enemies was come hither to cast a booe among them, and to raise differences amongst the members of parliament; a likely way whom their other designs failed them, to do mischief to the parliament: He desired them to consider the person of him whom they called the Accuser, who was indeed an Accuser of the Brethren, that it was the lord Savile, now clothed with a new Title from the king of earl of Sussex, and perhaps this present service was to be part of that by which he was yet to merit his new Title: That still he was the same man who was first of the Parliament party, then revolted from them to the King, and now was revolted from the King to the Parliament again, and that a Paper brought in from this person should be looked upon as a Charge against two worthy members of their house, or be in the least a ground to commit them to the Tower, he could not sufficiently wonder at the reason or justice of such a motion as that was: He rather thought it more reasonable and just, and accordingly moved, That this Libel, this Paper might be thrown out of the house, and the contriver of it, the lord Savile, be under more straight custody, and examined who set him on to promote this business; and that Mr. Hollis and Mr. Whitelocke might not be put to the trouble of any further attendance about it."

This smart motion of sir William Lewys, so contrary to the former, being spoken by him with great ingenuity and mettle, and seconded by sir Philip Stapleton and others of that party, so wrought upon the house, that the motion for commitment to the Tower was laid aside, and Mr. L'Isle ordered to give notice to Mr. Whitelocke that the house required his attendance there the next day.

July 3. Mr. Whitelocke attended the house all this morning, and nothing was said to him in public by reason of the other business: about 12 o'clock he acquainted the house that he received a Letter from a worthy member of the house, signifying their pleasure that he should attend them, which he now did accordingly, and humbly desired to know what the business was.

Then it was moved by some that the Letter and Paper of the lord Saville might be read to him, others were for a time to be appointed two or three days after for this business. Mr. Whitelocke desired it might be the next day. Upon his suit, it was appointed for the next day, and that the Paper and Letters of the lord Saville should be then ready, and he to be heard to say what he thought fit to this business.

July 4. About ten o'clock, some friends of Mr. Whitelocke's called upon the business appointed for the day, and the Letter of the lord Saville, with the Paper inclosed, were read in

the house to Mr. Whitelocke, after which he stood up in his place, and made Answer to it by way of Narrative to this effect :

“ Mr. Speaker ; I am happy, since I must be under an Accusation (which is no mean thing) in this honourable house, that this gentleman my lord Saville is my Accuser ; and more happy that you, to whom I have been so long a servant, and who know my ways so well, are to be my judges. I shall say nothing concerning my lord Saville, because he is my Accuser, but to the parts of his Accusation I shall give you a short and true Answer, with all ingenuity and submission to your great judgment.

“ His first part of the Accusation is, ‘ That I was a person well affected to the king,’ but he gives no instances thereof, nor is it a crime to be well affected to my sovereign ; we have all expressed the same in our Covenant.—I could give some instances to the contrary effect, as the plunder of my goods, seizing the profits of my lands, indicting my person of High Treason for serving you ; and giving away my inheritance to sir Charles Blunt a Papist ; which are no great motives to an extraordinary affection, more than a subject is obliged to his prince. But if my lord Saville means ‘ by well affected to the king,’ my being well affected to Peace ; I confess I am a passionate lover of a good peace, and seeker of it, and thereby have testified my affection both to king and parliament ; and the longer our troubles continue, the more we shall all be of this opinion and affection.—Sir, I hope I may be thought capable to know my duty to my king, and to understand what protection I was to have from him, the mutual relations of both ; and further I hold myself disobliged.

“ The second Accusation is, ‘ That I met at the end of Lindsey’s lodgings in Oxford, to advise about the king’s Answer to your Propositions, and that I there did give advice to the king, contrary to the trust reposed in me by you.’ To this I answer, That when your Commissioners came to Oxford, we consulted together, what (among other things) was fit for us to do in point of civilities and visits whilst we were there ; and it was agreed by us all, that we should not visit any that were excepted in your Propositions ; but that we might visit others, who did visit, or send visits to us.

“ The earl of Lindsey sent to visit Mr. Hollis and me with a compliment, That he was not well, else he would have come to visit us at our lodgings. And I having a particular relation and alliance to him, we went together to return a visit to his lordship, and told our fellow commissioners of our intentions before we gave the visit, and they approved of it. When we came to the earl’s lodging, we found there the earl of Southampton, the lord Saville, and some others ; but it was so far from an appointed meeting, that I knew not of their being there, till I saw them in the chamber.—There was much discourse among us about your Propositions, and they urged ‘ the unconscionableness of them,’ we affirmed the con-

trary, and vindicated your honour in them. There was also discourse concerning the Scots Commissioners, whom they affirmed to be ‘ averse to peace,’ we assured them that they were not, but willing to have a good peace.

“ There was likewise upon this occasion, discourse of the Presbytery, and of the point of *Jure divino* ; we told them that the Scots were off from the ‘ rigid Presbytery,’ and did not insist upon the point of *Jure divino*.—They were then likewise discoursing of Tumults, and of Persons, and Petitions brought to Westminster in a ‘ violent and disorderly manner ;’ we did not speak of any ‘ violent independent party,’ nor any the words mentioned in the lord Saville’s Paper, nor that the Propositions were unreasonable. They indeed pressed much upon that argument, that they ‘ were unreasonable,’ particularly the Propositions concerning Religion and the Militia ; we told them, that unless the king would grant those Propositions, it would be in vain to treat of any peace.

“ There was also much discourse about the acknowledging you to be a Parliament ; the earl of Lindsey said, That the king had acknowledged you a Parliament, by the words, ‘ Lords and Commons of Parliament.’ We answered, ‘ That this was the same style his majesty gave to the Assembly at Oxford, and we could not be satisfied with that acknowledgment.’ Then the earl of Lindsey demanded of us, how we would be acknowledged ? We told him thus ; ‘ The Lords and Commons assembled in the Parliament of England at Westminster.’

“ After this we returned to our lodgings, and acquainted our fellow Commissioners with the persons that were at the earl of Lindsey’s chamber, when we were there, and with the matter of our discourse with them. In all our discourses, Mr. Hollis and myself did justify your Propositions, and vindicate your proceedings.

“ Mr. Speaker, It is no small trouble to my thoughts, to have my name questioned in this house, but I am comforted in my own integrity and innocency, and in my Accuser, but chiefly in my Judges, to whom I, most humbly and most willingly submit myself.”

After Whitelocke had spoken, there was much debate in the house, whether this Paper of the lord Saville were an Accusation or Charge against them ? Many gentlemen argued, That it was against the privilege of the house to take it for an Accusation, being from the lord Saville, who was an enemy come from the king’s quarters, and one in contempt to both houses of parliament, for refusing to name the person from whom he received the Letter concerning Mr. Hollis, and therefore committed a close prisoner : That he had not discovered this to the Parliament in five or six months together that he had been in their quarters, but after he had been complained of by Mr. Hollis about a Letter, and Mr. Whitelocke was in the Chair of the Committee ap-

pointed to examine the business of that Letter.

Then the lord Savile brought in a new Accusation both against Mr. Hollis, and Mr. Whitelocke the chairman, to take off his testimony for Mr. Hollis.

Others went upon this ground, That this business might be committed, to see if the lord Savile would avow his Letter and Paper, and by what testimony he could make it good, and that Mr. Hollis and Mr. Whitelocke might have reparation, and be cleared from this aspersion.

But these were not their friends, and moved this out of a design to bring the business before a Committee to be examined, more than out of respect to them.

After a long debate, it was at last referred to a Committee to be examined in the general, and power given to the Committee to examine any member of the house, and a Message sent to the lords, to desire that the lord Savile might be examined at this Committee.

Those who were of a contrary party to the earl of Essex, set their interest upon it, to ruin Mr. Hollis, whom they found to be a great pillar of that party, and with him to ruin Mr. Whitelocke, they being both involved in this business; but they had not the same envy against Mr. Whitelocke, as they had against Mr. Hollis; nor could they well sever them. But now having got it referred to a Committee, they resolved there to put it home, and were full of expectation to destroy them both, which was their intention.

July 5. The Lords sent a Message to the House of Commons, in answer of theirs yesterday, That the lord Savile, if he pleased, might be examined from time to time at the Committee, to whom the business of his Letter was referred.

July 7. In the afternoon Mr. Hollis and Mr. Whitelocke attended the Committee touching my lord Savile's Accusation, where Mr. Samuel Brown had the Chair, and was no friend to them in this business, but pressed matters against them, more than a Chairman was to do.

The lord Savile was brought into the Committee, and his Letter and Paper read to him, which he owned as his, and his hand to them, and that he would justify them 'to be true upon his soul and his life.'

Mr. Hollis and Mr. Whitelocke averred the contrary, but with less passion, and with less indiscretion than the lord Savile, who being put to it by the Committee, could not make any proof of one particular mentioned in his Papers, more than they themselves acknowledged; which was the same in effect that they had said before in their narratives in the house.

Every particular clause in his Papers were severally read, and he heard to them, and they to make their Answers: but they both did it, with this reservation, "That what they did in this, was out of their willingness to give any satisfaction they could to the Committee, or to any particular gentleman; but they hoped that

they should not be examined upon this, as a charge against them, which was not allowed to be so by the house." Which after some debate seemed to be admitted, and that in general they should be heard in this business by the Committee, which they themselves freely offered.

The lord Savile insisted upon a Letter from Mr. Hollis to the duke of Richmond in a correspondence with his grace, but that did not touch Whitelocke, nor did he prove by the Letter a correspondence by Mr. Hollis, but by some circumstances raised jealousies of it in some of their minds who were not friends. Nor could his lordship prove any thing of his information, "That they distinguished the parties among them in the Parliament into the Presbyterian and the Independent parties; the earl of Essex and the Scots as the heads of the Presbyterians; and the other party being the Independent party, to be averse to peace: but the earl of Essex and his party (of which Mr. Hollis and Mr. Whitelocke were) to be the friends to peace;" Which words were denied by them.

The Committee adjourned to the next day, and nothing was further done at this meeting.

July 8. In the afternoon Hollis and Whitelocke attended the Committee for the lord Savile's business, which was very full: and many were there to promote the design of ruining them; and to preserve them, there were Mr. Recorder Glynn, sir Philip Stapleton, sir Wm. Lewys and many other noble gentlemen constantly attending upon this great Committee.

The lord Savile was again brought in to the Committee, and, as before, he justified the Paper; and that in the King's Answer to the Propositions, there were divers expressions and words, the same with those in the Paper which Mr. Hollis and Mr. Whitelocke did give to the earl of Lindsey at Oxford.

Being again shewed his Paper, and demanded by the Committee to say in particular what were the same words he intended, he desired to see the King's Answer; which was delivered to him, and he comparing their Paper, and the King's Answer together, observed several expressions and words in their Paper to be the same, with expressions and words in the King's Paper, and did particularly set forth which they were.

Mr. Recorder asked, If it were proved that Mr. Hollis and Mr. Whitelocke did give in a Paper at Oxford, which had in it those words and expressions which the lord Savile would be in the King's Answer. That he had not heard a y such thing proved; and then he thought the observations of the lord Savile upon the King's Answer, to be to little purpose.

Others desired to know how the lord Savile, being in those secret Councils at Oxford, should become so well afflicted, as he pretended himself to be to the parliament. He answered, That he was impeached at Oxford, for something that he spoke at those meetings with Mr. Hollis and Mr. Whitelocke, and that they met

more than once at the earl of Lindsey's chamber. To which they made no answer.

Then the lord Savile desired, that Mr. Hollis would produce a Letter which he brought to him from the duke of Richmond from Oxford, by which he believed, much of this business would appear. But it was returned upon the lord Savile, That even then when he came into the parliament, he confessed he was employed to bring letters, and a correspondence from the parliaments' enemies to this place.

Mr. Hollis said little to this Letter, and I suppose, and partly know, that such a Letter was delivered to him by the lord Savile from the duke of Richmond.

Mr. Gourdon at this Committee acknowledged, That the Letter and Paper was brought to him by the lady Temple, who was the messenger and agent of the lord Savile; and that the lord Say was acquainted with it before the Letter was delivered; and that sir Nathaniel Barnardiston, and sir Henry Vane, jun. were likewise acquainted with it, and wished him to offer the Letter.

That he said the house would be in a grand Committee, and then he could not offer the Letter. They replied, That they would call the Speaker to the Chair purposely to receive the Letter.

That none but these knew Mr. Hollis and Mr. Whitelocke to be the persons charged with having intelligence with the king's party; but only he told others in the general, That he had an Impeachment to deliver against two Members of the house, but did not name them to any others.

July 10. The Committee for the lord Savile's business sat again this afternoon, and Mr. Hollis, and Mr. Whitelocke, offered to make a Narrative to the Committee for their satisfaction, and to answer any questions which should be asked of them by any of the Committee.

Then Mr. Brown the Chairman moved the Committee, whether it were not fit, That as Mr. Hollis and Mr. Whitelocke were present, when the lord Savile was heard; so now the lord Savile should be present, when Mr. Hollis and Mr. Whitelocke made their Narrative.

This held not much debate, it being judged by most of the gentlemen there present, to be improper and unfit, and moved by the Chairman in too much favour to the lord Savile.

It was then taken into debate, Whether Mr. Hollis, and Mr. Whitelocke, should be heard speak by way of Narrative, or whether they should be examined as to a Charge; and it was over-ruled, that they should be heard by way of Narrative.

Then sir Peter Wentworth moved, That whilst the one of them was making his Narrative, the other might withdraw; and that they should not both be present together to hear what one another affirmed or denied! But this was not regarded.

Mr. Hollis began first, and made his Narrative, and, after he had done, Mr. Whitelocke

spoke, and both their Narratives were the same in effect with what they had spoken before in the house, and they denied some of my lord Savile's Informations which were not true; and he had no proof but 'his own honour' (which was not in much esteem) of most of them.

July 11. The Committee for the lord Savile's business, sat not this day. Some friends who sounded the Solicitor St. John, and the other great men of this Committee, told Whitelocke that they found them not so sharp against him as against Mr. Hollis, whom they were resolved to ruin if they could: but Mr. Whitelocke being so much involved in this business with him, they could not separate them, but either both, or neither must be ruined.

They prepared accordingly for their Defence, and although many private messages were sent to Whitelocke (and private conferences with him) "That if he would desert Mr. Hollis, and discover what he could say against him, that he should not only be preserved, but be rewarded and preferred;" yet they could not prevail with him to confess any thing against Mr. Hollis, or the trust of friendship wherein he held himself engaged.

July 13. The house went into the Committee of the lord Savile, where Mr. Hollis and Mr. Whitelocke had procured the earl of Denbigh to come, and desired that he, being one of the Commissioners with them at Oxford, would be pleased to declare his knowledge concerning the matters in question before the Committee.

The earl of Denbigh then told the Committee, "That he was desired by them to be there, and had leave of the house of peers to be at this Committee, and would acquaint them upon his honour with the truth of what he knew in this business.—He told them that he did well remember that at their first coming to Oxford, there was care taken by them, for their carriage and discourse there, that they were so punctual that he read the Propositions before-hand, that there might be no mistaking. That it was resolved as a thing of ceremony and respect, that they should make visits, but not to any of those who were excepted persons, and to refuse them being in the enemies quarters, they thought not fit. That they agreed, that by way of discourse, they should endeavour all they could, that the Propositions might be granted in general, that the king should allow them the title of Parliament; next the government and settlement of the church; and lastly, the militia: That they did agree that in all their discourses, this should be the subject matter; and that they should press the obtaining of them. That Mr. Hollis and Mr. Whitelocke did acquaint the Committee, that they had an intention to visit the earl of Lindsey, and he thinks the earl of Southampton; and very suddenly after they did acquaint them that they had been there, and of a long discourse which they had together: That to say particularly what the discourse was, he could not charge

his memory, but in general, it was the discourse that passed at that meeting; That he remembers but one visit they spake of, and it was a part of their agreement to acquaint one another with all the circumstances of their visits: that the earl of Lindsey and the earl of Southampton, and he thinks, the lord Savile, were named by Mr. Hollis and Mr. Whitelocke, to have been at that meeting: That he was told by them among other things, that they had little hopes, that they should have satisfaction in their desires: That he doth not remember any mention of a Paper given in by them to the earl of Lindsey: That the intelligence they had there was various; some had hopes of a good issue of the business, others had not; that Mr. Pierpoint had ill relations of the Commissioners to their disparagement; and at the Conference with Mr. Hollis and Mr. Whitelocke, there were very ill characters given of them.—He desired that nothing might be taken as positive from him concerning persons."

After the earl of Denbigh, the lord Wenman told the Committee, "that there was an agreement among the Commissioners of the parliament at Oxford, as the earl of Denbigh had related it, to pay civilities and visits to those that were civil to them, but not to any who were excepted in the Propositions from pardon: That he remembers not whether they did agree to press the granting of the propositions any of them more than the others, only by discourse among themselves, that they should press those that were of most difficulty to be granted: That they were acquainted by Mr. Hollis and Mr. Whitelocke, with their visiting of the earl of Lindsey. That to his best remembrance they said, the earl of Southampton, and the lord Savile, were there, and mentioned the particulars of their discourse, but he did not remember them; nor that they acquainted them with any hopes they had of having the Propositions granted: He remembered that Mr. Hollis said a little before their coming out of town, that he had a Paper again, which he spake publicly: That in their discourse they did insist principally, and they found it was thought fit to do so, upon the Propositions concerning Religion, and the Militia, and he did think that the earl of Lindsey was spoken of, when Mr. Hollis said that he had a Paper again: That he and Mr. Whitelocke were coming by All Souls College, and he intended to visit sir Thomas Aylsbury, but hearing that sir Edw. Hyde was there, who was a person excepted, Mr. Whitelocke did forbear to go in thither."

Others of the Commissioners who were at Oxford with the Propositions did declare themselves to the same effect, that the earl of Denbigh and the lord Wenman had done, and so the Committee rose.

July 14. The Scots Commissioners gave notice to Mr. Hollis and Mr. Whitelocke by their friends, that they had certain intercepted Papers and Letters of the lord Savile's,

which he was sending to Oxford; and the chief scope and end of them was to be informed from thence, whether Mr. Hollis or Mr. Whitelocke kept intelligence with the duke of Richmond, the earl of Lindsey, or any others of the king's party, that he might have the more whereof to accuse them here.

It was thought fit by their friends that the Scots Commissioners should be desired to acquaint the house of commons, with the Papers; upon which it should be moved there, to refer them to the Committee for the lord Savile's business; and the same was done accordingly.

This afternoon that Committee met, and these Papers were brought unto them, by the lord Warrenton and another of the Scots Commissioners, with a compliment expressing their desire to serve the parliament in any thing within their knowledge and power.—The Papers being read to the effect before-mentioned, the lord Savile was called in, and the Papers shewed to him, and he owned them to be his hand. Being asked what warrant he had to hold intelligence with the king's party at Oxford, he being now within the parliament's quarters, and come in to them, He answered, That he was authorised to do this by the Sub-committee for private and secret intelligence for the committee of both kingdoms.—Being again asked, Who of that Sub-committee by name did know of this his design, and did authorize him to send to Oxford about it: he answered, That the lord Say was from time to time acquainted with this business, and did encourage and authorize him to send to Oxford about it, and that he sent several times by Mr. Howard to Oxford, with much to the same effect.

By this their friends found the bottom of this design against them, to be from the advice, if not contrivance of the lord Say: and the lady Temple, a busy woman and great politician in her own opinion, was made use of by the lord Say to whom she was allied, and by the lord Savile, to be an agent in this matter. The design and endeavour also against them, was by these Papers and Examinations made the more apparent, which took off the edge of divers gentlemen who thought this Prosecution not ingenious, nor handsome against them. Their friends made good use of it, both at the Committee and afterwards in the house, and carried it by vote to have these particulars with the rest of the Examinations reported to the parliament.

July 17. The Report was made to the house about the lord Savile's business, and it was moved, "That there might be a further examination of Mr. Hollis and Mr. Whitelocke in the house, and that any member might have liberty to ask them what questions they pleased;" which the house ordered, and "that they should be severally examined, and to begin with Mr. Hollis."

Mr. Whitelocke sat still in his place, and it was moved, "That he might be ordered to withdraw, whilst Mr. Hollis was in examina-

tion;" but that was opposed, as contrary to the privilege of the house; that there being no legal charge against them, they ought to have the same liberty and freedom of sitting in the house as the other members had, and neither of them to be ordered to withdraw.

After much debate upon this point, it was brought to the question, Whether Mr. Whitelocke should be ordered to withdraw, whilst Mr. Hollis was under the examination of the house, and it was carried in the negative, That he should not withdraw.

This question being past, Mr. Whitelocke stood up, and told the Speaker, "That since the house had done him that justice and favour, and themselves that right, in the consequence thereof; yet now to manifest the confidence he had in his own innocency, and that he sought no advantages for his own vindication in this business, he would of himself, with their leave, withdraw, whilst the house should be in the examination of Mr. Hollis." Then he did withdraw, and went up to the committee chamber, at which the house seemed to give a good approbation.

Mr. Hollis was almost two hours under examination in the house, there being some particulars urged against him, which were not against Mr. Whitelocke, particularly in the matter of intelligence and correspondence with the king's party. The questions and matters upon which he was examined, were in effect but the same, which had been formerly mentioned in the house, and at the committee, to which he answered fully and prudently, and with great courage; and when they had sifted the business as much as they could with him, they gave him over, and sent for Mr. Whitelocke down out of the committee chamber to be examined.

He came into the house, and then Mr. Hollis withdrew of himself into the committee chamber, whilst Mr. Whitelocke was under examination. A multitude of questions were demanded of him, inasmuch as one gentleman, sir Peter Wentworth, asked him above thirty questions only for his part. The matters demanded of him were but the same in effect that had been mentioned formerly, and what he answered did agree punctually with what Mr. Hollis had said before. It is a very solemn thing to be examined by a house of commons, where there are so many wits, and so much odds and advantage to be taken against one single man; and that in a business of high treason, where honour, fortune, and life, are at stake.

The house sate upon this business till seven o'clock at night, the earl of Essex his party, and all their friends, putting forth the utmost of their power and interest to rescue these two members from the malice and danger they were now under. And the other party of the house as earnestly labouring to be rid of them both, either by cutting off their heads, or at least by expelling of them from being any more members of parliament. They were so eager upon it, that they ordered to resume the debate of this business the next morning.

July 18. The house proceeded upon the report of the lord Savile's business, and passed a vote, "That the same was ripe for judgment," and ordered, That they would proceed to judgment thereupon to-morrow morning.

July 19. The house proceeded in the lord Savile's business, and, after a long debate, upon the result, passed a vote, "That Mr. Hollis was not guilty of holding intelligence with the enemy, as was pretended, and they did fully acquit him thereof."

This gave good encouragement to Mr. Hollis and Mr. Whitelocke, and to all their friends, who would fain have brought on the rest of this business, but that it was almost nine o'clock at night, and therefore too late to proceed further in it this day.

The other party, their adversaries, would have declined any further proceedings of the house in this business at this time, hoping in time to get some further evidence against them, and then to revive it; and doubting, as the present constitution of the house was, that Mr. Hollis and Mr. Whitelocke might be acquitted.

Mr. Hollis and Mr. Whitelocke pressed the more earnestly to bring the business to a final determination, whilst their friends were in town, and the house fully possessed of the business, and in so good a constitution and humour for them, and they desired not to continue under a cloud and the various discourses of people, not to be kept lingering, but to know their doom, either of condemnation or acquittal.

Their friends at last with much earnestness, and against great opposition and debate, carried it by vote, to have it ordered, that the lord Savile's business should be resumed on Monday morning.

July 21. The house of commons, according to their order, resumed the debate of the lord Savile's business, and after a long and warm discussing of all the particulars and arguments relating to it, they at length, upon the question, passed a vote to this effect: "That it not appearing that Mr. Hollis and Mr. Whitelocke had done any disservice in their proceedings at Oxford, that therefore the remainder and whole matter of this report should be laid aside, and not to be further proceeded in. And that the said Mr. Hollis and Mr. Whitelocke should have liberty to prosecute (if they please) the lord Savile, now prisoner in the Tower, for damages."

Mr. Whitelocke absented himself from the House, when they came to give their judgment.

It was observed, that generally the gentlemen of best interest and quality in the house were all for the acquittal of them, and that it had scarcely been seen before, in any other business, that this holding so many days together, yet even the gallants who used, whatever business was in agitation, to go forth to dinner, and to some other of their refreshments, yet they attended constantly all the time that this business was in debate, and would not stir from it.

175. The Trial of Sir ROBERT SPOTISWOOD, President of the College of Justice in Scotland, and Secretary there to King Charles I. for High Treason, in the Parliament held at St. Andrews, November, December, and January:\* 21 CHARLES I. A. D. 1645.

SIR Robert Spotiswood having been sent by the king into Scotland to negotiate matters with the marquis of Montrose, and to carry him, among other things, a Commission to be generalissimo of all his forces there, took the opportunity of the army's marching southward for his more safe return to his master, to whom he was to give an account of his negotiation; but being unfortunately taken prisoner at the battle of Philiphaugh, where Montrose's army was defeated by general Leslie, he was carried first to Glasgow, and afterwards to St. An-

drews, where the following Process was prosecuted against him.

**DITTAY** against Sir Robert Spotiswood.

\* "The fury of civil wars," Mr. Laing observes, "when the battle has ceased, is almost invariably reserved for the scaffold. The number selected for execution was reduced to six" ["It seems that the number was seven]:" president Spotiswood the archbishop's son, sir William Rollock the attendant of Montrose from England, colonel Nathaniel Gordon, sir Philip Nesbit, Ogilvy of Innercarity, Guthry the bishop of Murray's son, Murray the earl of Tullibardine's brother. Their crimes were found in those sanguinary laws against state offences, which are still flexible to the interpretation, and subservient to the interests of the prevailing party, still cruel and inexorable to the unfortunate; but by which the adherents of each may alternately suffer. The execution of Spotiswood was peculiarly unjust. He had framed or brought the commission to Montrose, and accepted the office of secretary, which the parliament had formerly conferred upon Lanerk. He was convicted, therefore, of an obsolete treason, because he impugned the authority of the three estates; but his sentence may be more truly ascribed to the prostitution of his judicial character, in the Trial of Balmerino, A. D. 1634, [ante vol. 3, p. 591.] and to the suspicion to which he was obnoxious, of corruption on the bench.—Baillie, 1. 71. Parl. 1584, ch. 130, 'That none presume to impugn the dignity and the authority of the three estates, or to seek or procure the innovation or diminution of the power and authority of the same, or any of them, under the pain of treason.' So concise, yet at the same time so comprehensive, vague, and arbitrary, were the treason laws of Scotland. This act was passed to preserve the episcopal estate in parliament, against the efforts of the presbyterians, and was employed for the execution of Spotiswood, its most active partisan. The earl of Argyle was afterwards executed on the same act, 'to the reproach of justice.'" [See Argyle's Case, A. D. 1681, *infra*].

Sir Robert Spotiswood, you are indicted and accused before the committee of estates of parliament; that for suameikless, by the common law, law of nations, laws and acts of parliament, and practick of this kingdom; and by all justice, reasons, equity, and conscience, all that rise in arms, and concur with the adversaries of this kingdom, for subduing of their native country; all invaders, assaulters, or subduers of this kingdom, or any part thereof, by force of arms; all who contribute their help, countenance, and assistance, to the adversaries, assaulters, or invaders thereof in an hostile way: all who are either authors, abettors, maintainers, suppliers, or concur with the adversaries of this kingdom, in the assaulting, or subduing thereof, or any part thereof: and all who are art and part of the said crimes, misleads, and malversations above specified, or any of them, incur the pain of high-treason against his majesty, his crown, and against the estates of this kingdom, and the pain of forfeiture of life, lands, estate, and goods to be execute against them, by the estates of this kingdom, and the benefit thereof to be applied to the use of the publick for relief of their burdens: and the committers of the said crimes above specified, or any of them, are otherwise censurable and punishable in their persons, names, and fame, and in their lands, goods, means, and estate, by fining, confining, or otherwise as the estates of this kingdom shall think expedient. And albeit, That by the acts of parliament of this kingdom, especially by the 130th act of the 8th parliament of king James 6, in May 1584, It is statute and ordained, that none of the king's hedges and subjects presume, or take upon hand, to impugn the dignity and authority of the estates of parliament, or to seek or procure the innovation or diminution of the power and authority of the seamen, or of any of the estates thereof in any time coming, under the pain of treason. Likew, albeit by the fourth act of the third parliament of king Charles, dated 29th of June 1644, all takers up of arms against the kingdom and estates of the country are guilty of treason, and punishable by forfeiture of life, lands, and goods, or any other censure the parliament shall please to inflict. Yet nevertheless, the said sir Robert Spotiswood having shaken off all fear of God, and due respect to the laws of the kingdom, and all duty, that as a subject thereof

you ought to have carried to the kingdom, and to the defence thereof, especially in these troublesome times, when this kingdom has been threatened to be ruined and destroyed, with the hostile invasion of some of her unnatural brood, and some Irish rebels, and forgetting and contemning that gracious favour mentioned in the 33d act of king Charles's second parliament, of date 16 of November 1641, whereby the estates of parliament therein convened did then declare, that for the good and grave considerations mentioned, they would not proceed to a final sentence against you, for such crimes and misdemeanors as at that time you were cited before them, and accused as guilty of, nor would insist upon the punishment thereof. You have presumed and taken upon hand, to abuse the king's majesty, in purchasing from his majesty by your pretended ways, the office of secretary to yourself, and have received the signet thereof, which was formerly kept by the earl of Lanerk, who was appointed by his majesty and the estates of parliament in A. D. 1641, to be secretary to his majesty for this kingdom of Scotland, and that contrary to his majesty's Declaration emitted by his majesty in the said parliament; whereby his majesty did declare, that he would not imploy you in any office or place of court or state without consent of parliament, nor grant you access to his person, whereby you might interrupt or disturb the firm peace, was then so happily concluded. Likewise, since your purchasing of the said office of secretary, at least taking the samen office upon you, and of the keeping of the signet thereof, you have docquetted with your hand, signeted with the signet of the said office, several commissions granted to James Graham sometime earl of Montrose, a declared and forfeited traitor, and an excommunicated person: and especially, a Commission dated the 5th of June 1645, given by the king's majesty to the said James Graham, making and constituting the said James Graham lieutenant-governor, and captain general of all forces raised or to be raised within this kingdom; and giving power and authority to the said James Graham, to raise and levy forces within this kingdom, and to lead and conduct them against the king's majesty's good subjects, and against the forces raised and levied in arms by authority of the estates of parliament of this kingdom, for the maintenance, defence, and prosecution of the mutual League and Covenant. By which Commission so docquetted and signeted by you, as said is, the king's majesty's good subjects who have risen in arms for the defence of the said League and Covenant, and whose rising in arms is allowed and authorized by the estates of parliament of this kingdom, are designed as traitorous and seditious persons. And also, you have docquetted and signed with your hand, a proclamation alledged emitted by the king's majesty for holding of parliaments within this kingdom; which proclamation is totally destructive of, and derogatory to the dignity and authority of the

estates of parliament presently convened by virtue of the last act of the last parliament 1641, and which proclamation annuls and condemns the procedure thereof. And also, you have docquetted and signed with your hand, a commission granted by the king's majesty to James Graham sometime earl of Montrose, to be commissioner for his majesty for holding of the said pretended parliament: in docquetting and signing of which proclamation, commissions and warrants, you have abused the aforesaid office of secretary, and that to the derogation and diminution of the honour, dignity, and authority of the estates of parliament of this kingdom. Likewise, you not being contented with your abusing of his majesty, in purchasing of the foresaid office of secretary from his majesty, contrary to his majesty's declaration in parliament, in manner and at the time as said is, at least with the taking the same upon you, and with the docquetting the foresaid commissions to the said James Graham, and of the foresaid proclamation for the parliament; which is not only derogatory to the dignity and authority of the estates of parliament, but also destructive of the whole power thereof, and which declares the procedure of the estates of parliament to be treason: you have actually and really joined yourself in an unnatural and traitorous way against this kingdom, with the said James Graham and his rebellious army, wherewith he infested and troubled the peace of this kingdom, and cruelly and unnaturally destroyed and murdered the king's majesty's loyal subjects; and have been with the said James Graham at all the acts of hostility committed by him and his rebellious army within this kingdom, within the months of August and September last 1645, or one or other of them. And in special, you was with him and his rebellious army after the conflict at Kilsyth, which was upon the 15th of August last 1645, betwixt the army and forces of this kingdom, and the said rebellious army conducted by the said James Graham, where you did join yourself with the said James Graham and his rebellious army, and was actually with him thereafter, in his progress going through the country in subduing the same, viz. From Kilsyth, to Bothwell, and from Bothwell to Calder, and from thence to Limphoy, and from thence to Cramston-riddel, and from thence to Torwoodley, and from thence to Kelso, and from thence to Jedburgh, and from thence to Selkirk, and to the fields betwixt Selkirk and Philiphaugh, where the said James Graham and his rebellious army, were upon the 13th of September last, by the mercy of God upon his distressed people, and by the strength of his right-hand against his enemies, defeat and confounded, and where you were actually with the said James Graham and his said rebellious army; at least you the said sir Robert Sporiswood did join with the said James Graham and his rebellious army, at one or other of the saids places particularly above-specified; and during your being with the saids James Graham and the saids rebels the time foresaid, you

did subscribe a Letter written by yourself to some nobleman about the king's person in England, of the date, from about Kelso to 10th of September last 1645, which was after the foresaid conflict at Kilisyth; wherein you boast, that you had dispersed the king's majesty's enemies within this kingdom, some of them to Ireland, and some to Berwick; whereby you do expostulate, that no party was sent after lieutenant-general David Lesley, who at that time came in with, and conducted forces within this kingdom for suppressing and subduing that rebellious army, wherein you were for the time: And in which Letter, you professed a resolution to follow that rebellious war whereunto you had associated yourself, and to clear the kingdom of the rebels that had fled to Berwick. By which name of rebels you did mean and express his majesty's best and most loyal subjects, within this said Letter of yours, containing many expressions of your joining the said James Graham and his rebellious army, and of your unnatural and traitorous resolution to assist the prosecution of the ruin and destruction of this kingdom, as the said Letter bears. Which crimes above-specified, or one or other of them, you cannot deny; and therefore you as a traitor to this kingdom have incurred the pain of high-treason, and the pain of forfeiture of life, lands, estate, and goods to be execute against you by the estates of this kingdom, and the benefit thereof to be applied to the use of the public, for the relief of their burdens, or otherwise, in the option of the saids estates of this kingdom, you are censurable and punishable in your person, name, and fame, and in your lands, goods, means and estate, by fining, confining, or otherwise, as the saids estates of this kingdom shall think expedient.

Glascow, 5th November 1645.

The Committee ordains the Dittay to be transmitted, sent and delivered to the above-written sir Robert Spotswood, where he is presently in the castle of Glascow; and ordains the said sir Robert to be ready to answer to the said Dittay. At St. Andrews, upon the 13th of November instant 1645.

*Sic subscribitur*

J<sup>A</sup>. PRYMEROSE.

ANSWER to the DITTAY given in against Sir Robert Spotswood.

In regard the defences given in by James Ogilvie, against the relevancy of his Dittay, will militate likewise in my behalf, I repeat the same for me *brevitatis causa*.

This of mine is founded upon two acts of parliament, the one in May 1584, and the other in June 1644. By the first, it is declared to be treason, to impugn the dignity and authority of the estates of parliament, or to seek and procure the innovation or diminution of the power and authority of the same, or any of the estates thereof. It is subsumed, that I have forefaulted against this act, in so far as I, forgetting and condemning the favour

granted to me in the last parliament, 1641, have abused his majesty, in purchasing from him the office of secretary, contrary to the declaration emitted by his majesty in the said parliament. Likewise, since the purchasing thereof I have doquetted and signeted with the signet of the said office, the two commissions and proclamation mentioned in the Dittay: In doing whereof I am alledged to have abused the foresaid office of secretary, and that to the derogation and diminution of the honour, dignity and authority of the estates of parliament of this kingdom.

First, To this act of parliament I answer; It cannot militate against me, in regard of the scope and intention thereof; which was only to restrain the liberty which some in those times took to themselves, to call in question the power that one of the three estates then had to sit and vote in parliament. Which is clear, both by the preface of the said act, viz. "Finding the power, dignity and authority of the court of parliament of late years called in some doubt; at least some curiously travelling to have introduced some innovation thereanent," and by other records of that time; especially a declaration of the king's, yet extant in print, published in anno 1585. In which he who knew best what was meant thereby, declareth this to have been only the parliament's intencion in making of this act. So that it cannot be extended to other cases, namely this in hand.

Secundo. Giving, that this act of parliament could be extended beyond the true intent and meaning thereof; yet the particular deeds libelled, whereby I am alledged to have transgressed the same, and consequently to be guilty of treason, are not relevant to import so much. And first, whereas to aggravate the matter, I am charged to have been unmindful and unthankful for the favour I received at the last parliament: Let me say this much without offence, that as I esteem highly of their favour, so I was not obnoxious to their censure at that time: Whereanent I refer myself to that process, wherein nothing was proven of all that was alledged against me.

As to the purchasing of the secretaries office, what passed about that, and how far I had interest therein, I remit to the declaration given in by me to the committee at Glascow, which I use as a part of my defence against this point. The truth is, that the lord secretary being from court at the time, and there being sundry solicitors to his majesty for grants of divers natures, having relation to this kingdom, he was pleased, there being none then about him fit for the employment, to intrust me with a sighting and presenting the same unto him, by sending me a warrant under his sacred hand unto that effect, and the signet withal, to be kept by me during the absence of the secretary, or while his majesty should take further order thereanent. In accepting whereof, I cannot imagine that I did commit any thing worthy of blame; or that his majesty

did any thing contrary to the declaration emitted by him in parliament, he having conferred no ordinary place or office upon me, but only a temporary employment in *casu necessitatis*, having none else for the time to lay it upon. Likens I see not how I can be charged with presumption, as the Dittay bears, in doing thereof; in respect that by natural allegiance, from which no power under Heaven can loose me, I am bound to serve and obey his majesty whensoever he calls upon me for that effect. And as to that part of his majesty's declaration, not to grant me access to his person; it was never his intention otherwise but in the case annexed, viz. whereby I might interrupt or disturb the firm peace then so happily concluded; which, I thank God, never so much as once entered into my thought, as my own conscience, and my behaviour about his majesty this while past doth bear me witness. Besides his majesty's declaration, that he should not give any access to those therein mentioned, is not a penal statute, or act of the estates, disabling or restraining them to repair to his majesty, under any pain or certification in case they should contraveen, but only a declaration emitted by his majesty himself, that he would not admit them to the end expressed in the act. And therefore the same is inept to be the ground or aggravation of a criminal Dittay.

As for docqueting and signeting commissions, and other warrants presented by me, I hope in itself it is no crime, although I was not actual secretary, I having done it by his majesty's special and express command. For the three particulars chopt at in the dittay, I can answer: first, To the commission of lieutenantry docqueted by me, it is but a double, as the docquet, I believe, bears, the principal having been sent long before by the English secretary, who was the sole mover and procurer of it.

Next, To the proclamation for holding a parliament, it was drawn in *terminis* by his majesty's special direction, and docqueted by me, as it is, blank in day and place, and other circumstances; his majesty's intention in it being only this, to have it come to his hand, to whom it was intrusted, who by special order was to dispose of it, as should be found best for the peace of the kingdom, without derogation to the standing laws thereof: neither hath there any use at all been made of it, he having indicted a parliament before it came to his hands, by virtue of a precedent warrant. Wherein it may seem to annul and condemn the procedure of the estates of parliament presently convened, or be otherwise destructive and derogatory to the dignity and authority thereof, it is not my part to meddle with, his majesty being most concerned therein, whose business it is, I having no further hand in it, but in so far as I was obedient to my master's directions; which by no law or act of parliament can bring me within the compass of the least censure, let be the guilt of treason. For I am not

here (neither can be) called in question for that which usually the ministers of princes have been charged with (viz. giving of bad counsel) but only for docqueting and signeting these three warrants, which I could not in duty refuse, being commanded by his majesty to do the same.

To the third and last commission I make the same answer.

The second act of parliament, whereupon this dittay is founded, is in June 1641, bearing, that they who take up arms against the kingdom and estates of the country, are guilty of treason. For answer to this part of the dittay, I say, it is not relevantly subsumed, that I took up arms against the kingdom: only it is alleged, that I was in company with James Graham in his progress through the country, after the conflict at Kilsyth, which by no interpretation, can be thought to be a taking up of arms against the kingdom; especially since I was directed to him from his majesty, and by that occasion, and none other, was with him in company.

*Secundo*, In the act itself, it being propound in the quere, Whether assisting, or taking arms with those who have invaded the country, shall be relevant to make up a dittay against the doers thereof, no answer is given thereunto by the parliament; which imports as much, that they thought it not reasonable to make the assistants of such as are in arms against the kingdom and estates, guilty of treason: if not their assistants, far less such as were only in company with them occasionally, as I was.

As to the Letter written by me about Kelso, whatever be in it, it cannot be charged upon me; because it went no further than intention, I having upon better thoughts called it back, in regard of some expressions in it, which might seem injurious to those engaged on the other side. For whatever I think of the course, I thank God, I hate no man's person that is embarked therein, nor could wittingly irritate the meanest of them by any o, probrious compellation. Always the most can be in it, is inadvertancy.

To close all, in all this dittay, laying aside the second act, which I hope is sufficiently answered, I am not charged with any thing that is declared by any law or act of parliament to be treason, which by the 23 act, 1641, is required, before any person can be declared a traitor.

These answers for your lordships satisfaction, I have given in presently, under protestation, that (in respect I have been straitened with time, and could not gather my thoughts so well as was requisite) I shall be heard to alledge what further I can bethink myself of, before the closing of the process, either by writ or word, as your lordships shall be pleased to allow.

REPLIES to Sir Robert Spotswood's Answers to his Dittay, 12 December 1645.

Where the defender repeats the defence

given in by James Ogilvie, against the relevancy of his dittay, alledged by the defender to militate in 'his behalf. It is replied, That there are no defences given in by James Ogilvie, but only the defence of quarters, which is answered in the reply given in against the defence of quarters.

To the first defence, bearing, That the act of parliament in May 1584, does not militate against the defender, alledging that the scope and intention thereof, was only to restrain the liberty of some who called in question the power of one of the three estates. It is answered, the defence ought to be repelled, in respect of the dispositive words of the said act, militating against all those who should procure the innovation or diminution of the power and authority of the estates of parliament, or any of them; and the parliament are the best judges and interpreters of the acts of parliament, and of the extent of the sense and meaning thereof.

Where the defender in his second defence seems to insinuate, that nothing was proven against him in his process in anno 1642, wherein he received the parliament's favour. It is answered, that the time prescribed by the parliament for the trial of that whole process being but two months, the committee for the incendiaries could not proceed at that time to further trial, and if they had had time, sufficient probation would have been gotten in these processes, for proving of all, or the most part of the points contained therein.

Where in the said second defence, the defender affirms that he committed nothing worthy of blame, and that he cannot be charged with presumption, in taking upon him the secretary's office; because by his natural allegiance, he was bound to obey the king's majesty. It is replied, That seeing in the parliament 1641, the secretary's office, and all the officers of estate are to be provided and filled by advice and approbation of the estates of parliament, during their sitting, and of the Council, during the interval betwixt the parliaments: it was a high presumption in the defender, to accept of the said office, without advice and approbation foresaid; and his accepting thereof is a presumptive deed in prejudice of the liberty of parliament, by whose advice he should have been chosen and provided to the said office; his presumption being the greater, by the embracing of the said office, the same not being vacant, but was filled by advice of parliament: and therefore he ought modestly to have refused the said office, which he did not, but embraced the samen, and used it in manner libelled in his dittay, to the dishonour of the estates of parliament of this kingdom, by expeding and docqueting commissions and proclamations, declaring their procedures to be seditious and treasonable, chiefly the said commissions being in favour of James Graham a declared traitor.

Where in the said second defence, it is alledged, That his majesty's intention was never to grant the defender access to his person, only

in the case annexed to his majesty's declaration in anno 1641, viz. whereby the defender might disturb the firm peace then so happily concluded. It is replied, That these words of the king's majesty's declaration, are not of the nature of a restricting quality of the denied access mentioned in the king's declaration, as if access to his majesty's person had been granted to the defender, upon condition that the defender should not disturb the firm peace: but the words are declaratory, that in respect the estates of the kingdom had upon just grounds conceived, that the defender's access to his majesty's person heretofore, had disturbed the peace, and his access to his majesty's person thereafter would disturb the peace; therefore his majesty was graciously pleased to make the foresaid declaration, That he should not have access to his person, and so the estates would be in security, that he should not disturb the peace by his access. Like as *de facto* the defender's actions, since his attending his majesty's person, do testify, that he has had no small hand in disturbing the peace, which are presently laid to his charge in his dittay.

Where in the said second defence, it is alledged, that the king's majesty's declaration is no penal statute, restraining the defender from having access to his majesty's person, and therefore is ineptly libelled to be a ground, or aggravation of a criminal dittay. It is replied, That albeit it were granted, that his majesty's declaration were no penal statute restraining the defender; yet the same is pertinently libelled, to aggravate the defender's carriage against the honourable estates of parliament, by his expeding under his hand, as secretary to his majesty, the commissions and proclamations mentioned in his dittay; which office of secretary he did accept, whilst he did accede to his majesty's person, contrary to his majesty's declaration made in parliament.

Where the said second defence bears, That the defender cannot be quarrelled nor challenged for docqueting of the three particular papers mentioned in his dittay, he having done the same by his majesty's special command, and he not being quarrelled for giving counsel to the samen. It is replied, that the defender's docqueting thereof, not only clears his accession to the evil counsel, given to his majesty for granting the said commissions and proclamations, but also is a part of the prosecuting of that evil counsel, and of its desired effect. And it was the defender's part, as the part of a true and loyal subject to his majesty, to have diverted his majesty from giving ear to such evil counsels: but on the contrary, it is acknowledged by the defender in his first section of his third defence, that he was sent by his majesty to James Graham, whereby it is more than evident, that the defender has had a great hand, not only in the framing or advising of the said commissions and proclamations, but also in the conveying of the samen to the said James Graham, he being a declared traitor,

and being in arms against the estates of this kingdom both with fire and sword.

Lastly, the whole second defence ought to be repelled, in respect of the dittay, bearing the defender his acceding to his majesty's person contrary to his majesty's declaration in parliament: his accepting of the said office of being secretary, contrary to the act of parliament, anent the providing of the places of officers of estate; and his abusing of the same office by docqueting and signeting commissions and proclamations, destructive of, and derogatory to the dignity and authority of the parliament.

To the first part of the third defence, bearing that the defenders' being in company with James Graham in his progress through the country after the field at Rilsyth, cannot be interpreted the taking up of arms against the country, he being sent to James Graham by his majesty. It is replied, that the dittay is relevantly subsumed from the act of parliament, viz. That the defender did join himself with James Graham and his rebellious army, and was with him and his army at the places libelled in his dittay, at least at one or other of them; which joining of the defender with the rebels, who were in arms against the country, is a taking up of arms against the country. Likeas, the defender in his defence founded upon quarters, grants that he was taken prisoner by an officer of our army, and so grants that he was in the rebel army against ours.

To that part of the third defence, bearing that the act of parliament 1644, makes no answer to that part of the query therein mentioned, anent assisters. It is replied, That the dittay is founded upon the dispositive words of the act of parliament against taking up of arms, and not upon what the act of parliament has not answered. And where the defender affirms, that he was only occasionally in company with James Graham: It is replied, that it is contrary to the preceding article of his third defence, bearing that he was sent to James Graham by the king's majesty, and so cannot alledge that he was there occasionally.

To that part of the said third defence, bearing that the letter mentioned in the defender's dittay, went no further than intention, and was called back again. It is replied, that the letter, albeit found upon the defender himself, is a declaration of the defender's resolutions therein, and is mentioned in his dittay, as an aggravation of his carriage, whereof if he had repented, he would surely have destroyed the letter, and retired himself from the rebels. And where the defender affirms, that he is not charged with any thing that is declared to be treason by any law or act of parliament, except upon the act of parliament 1644, ought to be repelled in respect of the dittay, which is also founded upon the act of parliament 1584.

Item, To the first part of the eik anent the defence of quarters, the procurators for the estates refer the samen to the commissioners for the process.

To that part of the eik given in by the defender upon the 13th of this December 1654, bearing that the proposition of his dittay is not relevant, in so far as it is founded upon the common law, equity, reason and conscience, because it is provided by diverse acts of parliaments, that the king's lieges should be governed by the king's laws, and the laws of the realm. It is replied, That the proposition of the dittay is relevant, as being founded upon the common law, equity, and reason, because, by the 69th act of the 6th parliament of king James 5, it is found by the estates of parliament, that the king's majesty has just action to pursue all summonds of treason done and committed against his person and commonwealth, conform to the common law, good equity and reason, notwithstanding there is no special law, act nor provision of the realm made thereupon before, and the defender's dittay is a dittay of treason.

Item, To that part of the eik given in by the defender upon the 15th of December, bearing that the defender cannot be challenged upon the act of parliament 1644, because the samen was not made by the king's majesty and estates joined together, making 'communem reipub. sponsonem,' which is the ordinary definition of law. It is replied, That the defence clears the defender's carriage, and all the passages libelled in his dittay, to have been clearly against the estates of parliament, he now averring, that it were hard to challenge him upon the act of parliament 1644, because the king's majesty was not present thereat. The defence itself insinuates tacitly, That this present parliament is no parliament: for if this be a parliament, and was a parliament in anno 1644, then the act is obligatory, and does oblige all the lieges, so that the defence is rather a declinator of the honourable estates of parliament, than a defence, and in effect merits no answer, but censure.

22d December, 1645.

Produced by the procurators of the estates, and given up to sir Robert Spotswood this day, with the papers formerly given in by him, and orders him to give his Duply to this, against Thursday next at ten o'clock in the forenoon *peremptorie*.

DUPLES given in by sir Robert Spotswood, to the Replies made by the Procurators of Estates against his Answers to his Dittay.

1st. Whereas it is replied, that the dispositive words of the act of parliament May 1584, militates against those who procure the innovation or diminution of the estates of parliament. It is duplied, That neither the dispositive words of the act, nor the reply militates against me; because neither is it, nor can be subsumed that I have impugned the authority of the estates of parliament, or have procured the diminution of their power, by calling in doubt or in question, or denying their power anent the providing the secretary's office, and all other places of the state by their advice,

and by procuring the power and liberty granted unto them by the act of parliament 1641, to be retreated and innovated, and taken from them; which is the only crime forbidden by the dispositive words of that act, as is clear by the same, and by the narrative of the said act anent the occasion of it, which declares the dispositive. And albeit I had accepted the office of secretary without the advice and approbation foresaid, which is denied, my accepting thereof could not import a contravening of the said act 1584, and a downright treasonable impugning of the authority of the estates, because the contravening of an act of parliament, or the accepting of an office not conform to an act of parliament, is not a direct impugning of the authority of the estates of parliament, but a null act; "*et quod est nullum de jure, nullum sortitur effectum*:" otherwise if the consequential impugning of the authority of the estates of parliament by contravening of acts of parliament, should fall under the compass of the said act 1584, Treason should be too frequent, in regard the contraveners of any act of parliament does in consequence impugn the authority of the estates.

2dly, Whereas it is replied, That if there had been sufficiency of time, there should have been sufficient probation gotten against me in my former process. It is answered, "*De his quæ non sunt, et non apparent, idem est judicium*;" and notwithstanding the pretended shortness of time, there was process gotten against others, but none against me.

3dly, Where it is further replied, That it was a presumption in me to accept the said office, being already filled by the advice of parliament. It is answered, that all presumption is not treason, and the act of parliament anent the providing of these places by advice of the estates, does not bear, that if they should be provided otherwise, the acceptors should be punished as traitors.

2d. Repeats the declaration given in by me and my defence, and denys, that I embraced or accepted the said office; and the doing of acts otherwise incumbent to the secretary, cannot import the accepting of the office, seeing it cannot be denied, but either the necessary absence of a secretary, or in time of sickness, or in the vacancy, before his majesty could acquaint the parliament or council, or have the advice and approbation anent the filling these places, his majesty may command any of his subjects to supply the place, without any hazard of treason.

4thly, Whereas to the defence, bearing, That his majesty's declaration, that he should not grant me access to his royal person, whereby I might disturb the peace, it is no penal statute, and consequently it can be no ground of a dittay: it is replied, that the declaration is not of a restricting quality; and that though his majesty's declaration be not a penal statute, yet the same may be enough to aggravate my carriage. I reply, that I repeat the defence, and oppose the declaration itself: and if the

declaration be not a penal statute, as it is acknowledged, it cannot be libelled pertinently to be a relevant ground of a dittay, and consequently it cannot aggravate the defender's carriage; "*et quod non relevat, non aggravat*."

5thly, Whereas it is replied, That my docketing the papers mentioned in the dittay, clears, that I gave ill counsel in granting the said commissions and declarations, and is a part of the prosecuting of that counsel, and that as a good subject I should have diverted his majesty. It is replied, That all these who are employed to docket or sign papers, are not admitted to be of his council, and cannot in good manners intrude themselves to divert his majesty from his resolutions, and refuse to sign or docket such papers as his majesty is pleased to cause present to them, upon pretext, that they in their judgment disprove them; and I repeat my answer, whereunto no reply is made, That what I did in these particulars, was in obedience to his majesty's express commands, and in law "*qui jussu judicis aliquid facit (multo magis) of the supreme judge and magistrate non videtur dolo malo facere. qui parere necesse habet*." ff. de Regul. Juris l. 167. § 1.

6thly, Whereas it is replied, That the dittay is relevantly subsumed; That I did join myself with James Graham, and was with him in his army, and that in opposing my defence for quarters, grants that I was in the rebels army against our army: The defence is repeated, and that subsumption is no wise relevant, because it is not conform to the act of parliament, that he took arms: And an occasional being in an army cannot import a joining, and taking of arms. And although I have granted that I was taken prisoner, being occasionally in the army, I have not granted that I was in the army as an actual taker of arms against the country.

7thly, And where the reply bears, That I cannot alledge, that I was occasionally in the army, because I have granted in my defence, that I was sent by the king: It is answered, That in affirming that I was occasionally in company with James Graham, I am not contrary to myself, and my meaning being, that I was there being sent, but not there of purpose to join actually with him in taking of arms.

8thly, Whereas it is farther replied, That my letter, albeit found upon me, is a declaration of my resolution, and is mentioned as an aggravation of my dittay. The defence is repeated, and the keeping and not sending of that letter, argues my resolution to the contrary.

9thly, Whereas to that part of the defence, bearing, That the proposition of the dittay is not relevant, in so far as it is founded upon the common law, and other grounds not authorized by acts of parliament: It is replied, That by the 69 act of 6th parliament of king James 5th, it is found, That the king's majesty has just occasion to pursue all summonds of treason conform to the common law, equity and reason, notwithstanding that there is no special law

nor act of parliament made thereupon. I duly, that by the said act of parliament in anno 1540, it is provided, that though there be not a special law or act of parliament anent the raising of summonds, and regulating of processes against parties accused of treason, the samen may be doue conform to the common law, equity and reason: but it is not meant, that dittays of treason may subsist on these pretended grounds, without an act of parliament prohibiting the lieges, and putting them in *mala fide* anent the committing of unlawful acts under the pain of treason; which is clear from the act itself, being made upon the occasion of raising of summonds against the heirs of unquhill Robert Lesly, and to see his memory delete and extinct, for certain points of lese majesty. The question was then, and it was murmured, as the act bears, not that he was accused of certain points which were not treason by any act of parliament or law of the country; but only that it was a novelty to raise summonds and move action against a dead person: and therefore the said act being only ordinatary quoad the regulation of process, does not derogate from so many fundamental laws, providing, that the king's lieges should be governed by the laws of this kingdom, and of no other; especially seeing it is declared likewise by the 28 act of his majesty's 2d parliament, that no person can be declared traitor but for contravening a law or act of parliament made, under pain of treason. And it were absurd, that the subjects of this kingdom, who cannot in reason be obliged to obey laws, but in *quantum sunt notificati*, should be judged by laws, which they neither know nor can know.

10thly, Whereas the replier repeats as a defence, that which is only humbly represented by me, and not proponed by way of defence, in regrating how hard my condition is to be judged upon the late act of parliament made in the time of these unhappy combustions, and draws odious consequences to irritate the estates. I repeat my paper, and conceive, that without giving occasion of such cruel inferences, and without offence, I might regrave my hard fortune, having adhered to his majesty *bona fide*, and following the light of my judgment, out of confidence that I was not contravening any known law. And now being brought to answer a ditty founded upon a late act of parliament, made before the end of these unhappy distractions *re non integra*, when I was out of the kingdom, I would have expected, that since these revolutions have brought the replier and me to appear in other stations than we have been in formerly, that he should have forbore to have used such expressions, as in the end of his reply he hath done.

ANSWERS for Sir Robert Spotswood, founded upon Quarters.

Although the Answers to these things, wherewith I am charged in my Dittay, be both easy and obvious; yet I do adhere main-

ly to that defence, founded upon the law of nations and humanity itself: That I cannot be put to my Answer, in regard when I was taken prisoner, I had quarters granted me by an honourable person, an officer of the army, unto whose promise and word of honour I do appeal. As to that which may be said for the equity and necessity of maintaining this universal practice of nations, because it is sufficiently touched in the defences given in by some others at this time, to avoid unnecessary repetition, I refer myself thereunto; whereunto I add this much only.

That hitherto, since the beginning of this unhappy war, quarters and exchange of prisoners too, have been allowed on both sides; which never having been discharged, to deny now to these are in your power, after that by the fortune of war you have got the advantage in the matter of prisoners, I leave it to your lordships' consideration, if it be fair, and how it may be construed in the opinion of the world. Besides, I hope your lordships will use your prisoners no worse than your friends and associates in England (who are in arms for the self-same cause) are accustomed to do; between whom and the king's party, there have always fair quarters been granted. Which makes me wonder the more of the report that is going, of some that come from thence, with instructions to press the execution of justice upon the prisoners. The which advice, if it come from them, being so unsuitable to their own practice, ought to be suspected, as tending to the discredit and weakening of this nation.

Now because upon the decision of this point dependeth much of the welfare of this kingdom, both parties presently in arms, being to take it for a rule hereafter, in the matter of quarters; I hope your lordships will amongst other respects, have before your eyes the safety of many innocent souls, who will be interested in the result thereof; and will not listen to any motions, which instead of curing the sore, will inflame it, and be the ready means to perpetuate our unnatural divisions, and make them irreconcilable.

Liked DEFENCES given in for Sir Robert Spotswood.

That he adhereth to the Defence already given in by him, founded upon quarters, and craveth that it may be first discust, being a peremptory defence *impediens processum*; and eliding both the proposition and conclusion, in so far as capital punishment and forfeiture of life is inferred against him. And as in a criminal pursuit before the justice, if a defence were proponed upon a remission, remitting the crime of treason in so far as may infer forfeiture of life only, and not of lands and goods: The said exception, albeit partial, and not elusory of the whole proposition and conclusion, being proponed *primo loco*, will be first discust. And therefore the Defender being in the same case, and the exception upon quarters being in

effect equivalent to a remission, so far as it secures his life, and elides the conclusion of capital punishment, he ought to have the like benefit.

It is further answered for the Defender, that the proposition of the Dittay is no-wise relevant, in so far as it is founded upon the common law of nations, equity, reason, and conscience; because the foresaid grounds, before they be determined and authorized by positive laws and statutes, are not relevant to be grounds of criminal dittays, whereupon capital or arbitrary punishments are inferred, in regard it is a fundamental law in all well-governed kingdoms, "*pœnam alicui non esse indicendam, nisi expresso jure cautum sit.*" ff. de verb. signif. l. 131. Likeas it is expressly provided by diverse acts of parliament, that the king's lieges should be governed by the king's laws, and laws of this realm allenariv, namely, by an act of the 5th parliament of king James 1, c. 48, and anothe. of the 6th parliament, king James 4, c. 79.

Whereas the Dittay is founded upon the 4th act in June 1644. The Defender represents, that as he had no hand in the beginning, and hath never been a fomentor since of this unhappy combustion and division between his majesty and his people, so he will carefully avoid all ticklish dispute ament these questions between them. Nevertheless he is confident, that without offence he may remonstrate how hard his condition is, being put to answer a Dittay, having no other warrant in law but a late act of parliament, not made as all other former acts and laws, by his majesty and the estates joined together, and making *communem reipublicæ sponsonem*; which is the ordinary definition of laws: but during, and in the time of an unhappy division between his majesty and his subjects, being in arms, as they both profess, for maintaining of their rights and privileges, without intention to prejudice or diminish the known right one of another. When such fatal questions do fall out between such parties, and when necessity involves all men to side with one of them, and men are left to their own judgments and the light of their consciences, without the clear direction of positive laws, determining expressly what the carriage of private men and subjects should be in so unhappy a case: It hath ever been thought excusable, that they should follow the light of their own consciences and judgment, albeit mistaken and erroneous; and therefore should enjoy the benefit and privileges of the law of war and nations, whereof one of the main and principal is, that they should not be judged by the rules and laws of these against whom they have sided; especially such as are made during the dispute, and while the war is not ended, but either by the preceding laws made in time of peace, or by such as are agreed upon by both parties after a happy pacification. The reason of this law and practice of nations is, because "*in omnibus statibus controversiarum, fieri potest ut neutra litigantium pars sit im-*

*proba: et sicut ex probabili causa litigantes in disceptationibus fieri, victi lite etque sententia non condemnantur calumnia, utrinque tamen juratur de calumnia; ita censetur in disceptatione et lite armorum.*"

REPLIES to the Defences given in by Sir Robert Spotiswood, founded upon Quarters.

Whereas his Defence given in upon the 8th of December 1645, hears, that he cannot be put to answer his Dittay; in regard, when he was taken prisoner, he had quarters granted to him by an honourable person, an officer of the army; and referring himself to the defences given in by others, ament the equity and necessity of maintaining the universal practice of nations, ament quarters.

It is replied, The defence founded upon quarters, alledged granted to him, is not relevant as it is set down; the defence not descending upon the person giver and grantor of the quarters, and time and place, when and where. 2. Albeit it were contended who gave him quarters; yet the defence bears not what the grantor of the quarters promised to the Defender the time of the granting thereof: for at the taking of captives, several takers give several promises to their captives of several and distinct natures. 3. The defence founded upon quarters, as being proposed to liberate the Defender from the crimes libelled in his Dittay, and of the condign punishment thereof, ought to be repelled; because, whatsoever hath been heretofore, or is presently the custom of other nations in their wars, when one nation is in arms against another, the estates of parliament of this kingdom are not to take notice thereof, but in *casu de quo nunc agitur*, ament the bringing to due trial and condign punishment, these who have risen in arms, and taken arms against the estates of this kingdom. The alledgeance founded upon any promise, pardon, impunity, or quarters given by some particular men, cannot free the Defender from just trial, and condign punishment, seeing the question is not here of any man taken in *bello*: But the question is ament the punishment of these who have taken arms in a treacherous and unnatural way against their own native kingdom, and joined themselves with a declared traitor, risen in insurrection within the Kingdom; who not only has taken arms against the estates of this kingdom, and the liberties of the nation, but also against the religion presently professed within this kingdom, and against the mutual league and covenant established by the parliament and assembly of this kingdom: In defence whereof, many thousands of his majesty's good subjects within this kingdom have been cruelly cut off by that declared traitor James Graham, to whom the Defender did join himself at the times libelled in his Dittay. The case being thus stated, that the Defender is challenged and accused for rising in arms, and joining with James Graham, a declared traitor and enemy to this kingdom, who had taken arms against the

estates of the kingdom, for opposing of the mutual league and covenant: There is none who will think, that if any of his adherents, counsellors, or those who are joined with him in arms, being by the Lord's mercy towards his distressed people in this kingdom, delivered into the hands of the estates of this kingdom, should alledge for their defence and impunity, upon this ground, that when they were taken, their takers promised to save their lives, or their fortunes: It cannot be thought that this should free the delinquent, unless it be thought in the power of any private man in the army whatsoever, in his private way, to pardon the greatest offenders against the estates, and opposers of our solemn league and covenant; *quod est absurdum*. If this evasion be sustained, then, without any great hazard, there is a door open to all close malignants (who in their cautious way, dare not appear what truly they are) to join in arms with the public traitors, and to have some of their own temper in our army, ready to give them quarters, when an adverse wind blows. Likewise, if this defence of quarters be sustained, then the whole nation, especially the estates of parliament, do violate the oath of the covenant, and the oath of the parliament, aient the prosecuting and censuring of malignants, opposers of the covenant. And therefore there cannot be any impunity promised in the fields to a delinquent, by any private man whatsoever, in prejudice of the solemn league and covenant, and defence and maintenance thereof. But these who have risen in arms against the estates of this kingdom, as they are punishable by the laws of the kingdom, so these laws cannot be evacuate, and made of no effect by any man's protection or promise.

Where in the defence founded upon quarters, an example is cited of the wars of England. It is answered, That the estates of parliament are not to be ruled by the example of the army of the parliament of England, but are to proceed and to judge before God, that all means may be essayed to divert his wrath from this nation; and are to proceed conform to the laws of the kingdom, in prosecution of the solemn league and covenant.

Where in the said defence it is insinuate, that the safety of many innocent souls will be interested in result of the question of quarters. It is answered, that the same needs no answer in law; but it may justly receive the answer, That if justice be done upon God's enemies, the Lord will let us see judgment upon the enemies of this kingdom, whose terror is now casten up, and upbraided.

And where in the defence upon quarters, it is alledged, that scripture confirms the law and practice thereof, the 22d verse of the 6th chapter of the 2d of the Kings, aient the answer made by the Prophet Elisha to the king of Israel's question, "If he should smite the Syrians whom the Prophet miraculously led blind into Samaria." It is answered, that that passage of scripture does not confirm the law

and practice of quarters, because the Prophet thereby does not confirm and allow the law and practice of quarters, but cites a custom of the kings of Israel, which of itself is not allowable: being reproved by the spirit of God, both in Saul for Agag, and in Ahab for Benhadad, in the 15th of the 1st of Samuel, and in the 20th of the 1st of the Kings. And the Prophet Elisha was alledging the kings of Israel their unlawful customs, not to confirm the custom, but to shew the kings of Israel what miracle the Prophet had wrought. And where it may be answered, That there was an express command of the Lord for the not sparing of Agag; yet it is to be remembered, that there is no such express command for Benhadad. 2. The tie of the covenant is no small tie, for punishing the enemies of religion, and these who have risen in arms against the estates of this kingdom; and is a bond tying the estates of parliament to the prosecution of delinquents to their condign punishment.

Item, Albeit quarters were to be sustained within this kingdom, (as they are not to be sustained as aforesaid) yet no quarters could be granted to this defender, he being by the propositions of peace ratified in both parliaments of Scotland and England, put amongst the number of these who should expect no pardon. In prejudice of which declaration of the estates of parliament, none but the estates of parliament, or others having their power, could promise impunity.

22 December 1645.

Produced by the procurators of the estates, and given up to sir Robert Spotiswood this day, with the papers formerly given in by him, and orders him to give in his Duply to this against Thursday next, at ten o'clock in the forenoon, *peremptorie*.

DUPLES by sir Robert Spotiswood, to the  
Replies made against his Defences upon  
Quarters.

Whereas it is replied, that the defence upon quarters is not relevantly set down, because it is not condescended upon the giver of quarters, and the time and place. It is duplied, that time and place, when and where I was taken, is so nottour, that there needs not any further condescending; it being known that I was taken in the field about Philiphaugh, immediately after the conflict there. And the said defence is relevant, without condescending upon the giver of quarters, because by the law of war and nations, these who are taken in the field, *eo ipso* that they are taken, by whomsoever, have the right and benefit of quarters; neither are they obliged to take precise notice of the name and quality of these who take them: Neither is it sometimes possible in these occasions, when so many together are promiscuously in action. And yet I condescend that it was my good fortune to be taken by an officer belonging to a man of honour and eminence, both in the state and the army, the earl Lanerk, to whom I was brought immediately

thereafter, and had from him that courteous and favourable reception that could be expected from such a man, in being secured from all violence and wrong. And as honour and nobility did weigh down in him these prejudices, which he might have had, upon misinformation, against me; so I am confident that the unquestionable law of arms will not be violated in me, who am prisoner of such a nobleman.

Where it is replied, that the defence bears not what the granter of quarters promised to me in time of granting thereof, and that at the taking of captives, several takers make several promises of distinct natures. It is answered, that in these occasions, when men are so much taken up with action, they have not leisure, neither are they in use to stand upon promises and capitulations; and the granting of quarters, without any other expression or condition, is as binding by the law of arms, and secureth as much the receiver's life, as if there were a formal instrument upon it: '*Qui enim hostem non interficit, sed capit, tribuit, capto jus ex tacita pollicitatione*,' though there were no other expression. Yet to clear this part too, I refer my quarters, and the manner thereof, to the relation of the said noble earl, and of the laird of Silvertounhall, one of his captains, by whom I was first taken.

Where it is replied, that whatsoever hath been, or is the custom of other nations, when one nation is in war against another; '*in casu de quo nunc agitur*,' quarters cannot free me, because I was not taken in *bello*, but in a treacherous way against my country, and have joined myself with a declared traitor. It is duplicated, 1. Albeit the reply bears, that the estates of parliament are not to take notice of the law and custom of nations: Nevertheless, I, without prescribing or prejudicating what the estates of parliament will, or are to take notice of, do adhere to the common law of nations and war, which hath force every where; '*jus enim gentium omni humano generi commune est*.' Neither is the said law limited to the case of a national and foreign war, when one nation is in arms with another; but hath place in *omni bello*, whether foreign or intestine, which falls under the definition of war. For war is defined, '*publicorum armorum contentio*,' upon some probable grounds and motives, which either side conceive they have to be in arms; which agreeth to civil wars as well as foreign. And therefore the necessity and favourable laws of war have place in these civil wars and distractions, and that with greater reason than in any other; because albeit they be called wars, those who are engaged on either side are not properly called *hostes*, but *adversarii*; for this reason, '*quia in civilibus dissensionibus, quamvis sæpe res pub. lædatur, non tamen in exitium reipub. contenditur*,' as the law saith. So that the benefit of quarters cannot be denied in civil wars, no more than in foreign. Likewise, it was acknowledged elsewhere by the replier, that par-

ties taken in *prociactu* of this war, may challenge the benefit of quarters: as appears by the replies and triplies in James Ogilvie's former process, which are in the clerk's hands, and are repeated by me, *brevitatis causa*.

2. Where the said reply bears, that I was not taken in *bello*, but in an insurrection, and as the replier states the question, it is affirmed, that none can think that the defence upon quarters should free me; I humbly crave, that what I am necessitate to alledge for my just defence be not mistaken, seeing I have no intention to dispute so high a question as the lawfulness or unlawfulness of the war; but only to vindicate myself, and make it appear that the benefit of the law of nations ought not to be denied to me. Therefore I answer, that I cannot be judged by the replier's thought and assertion, either in stating the question, or deciding it; and I cannot conceive that I can be said to be taken in an insurrection, and not in *bello*, seeing insurrection in the notion and definition of law is properly, when in time of a happy peace and harmony betwixt a prince and the collective body of his people, private and factious men, for their own ends and designs, '*Plēbem contra Rempub. colligunt*;' as Sheba the son of Bichri did against David. But when there is a division betwixt the prince and his people, it cannot be said that he or his adherents, who, upon probable (though possible erroneous) grounds, follow their own judgment, are in an insurrection. And the question being stated, as truly it is, when a sovereign prince is in terms of difference with his people, and both profess that they are for the same ends, and that the prince intends nothing but the maintenance of his just right, without prejudice of religion or liberty of the subject established by the laws; and on the other part, these who are on the other side profess, that they intend nothing but the preservation of religion and their liberty, without diminution of the king's greatness, power, and sovereignty, established by so many laws; and none being to interpose themselves to be judges of so high differences, both sides conceive they are necessitated to take arms for these ends respective. If the prince give commission and command to any of his subjects who are of the same opinion with himself to make a diversion; whether or not are these who are taken upon that side, to be thought to be taken in *bello*, or in an insurrection? The question being so stated, it is evident upon the foresaid grounds, and from the story of all times, and the treaties of these who have written upon war, and the laws thereof, that such a war, by the law and practice of all nations, admitteth and challengeth the privileges *et jura belli*, whereof that of quarters is a main one. Neither are the persons or conditions of these who are intrusted with the managing of the war to be considered, in prejudice of those who adhere to the prince, and are with these whom he employeth, not out of any personal respect to them, but as they represent the prince by com-

mission. Neither can this war be thought to be of another nature than that in England, where quarters are neither denied nor violated. And what moderation hath been used in the like civil distractions in this country, during that contest and war betwixt the Bruce and the Baliol, and in the times of king James 3, and queen Mary, and in the beginning of king James 6, his reign, and also during the cruel wars in France, or yet in those of the low countries, the histories of those times bear record. It is reported that king Robert the Bruce, having taken many prisoners, *dimisit omnes humaniter habitos*; which are Buchanan's own words. These who sided with king James 3, and were at the field of Stirling, though not only the greatest part of the nobility and country were on the other side, but also the prince, were not esteemed or designed enemies to the country, but are said to have been of another and of an ill opinion, Act. 3 and 5, of the first parliament of king James 4, and are said by Buchanan to have followed *diversam sectam*; and divers of the nobility who had adhered to king James 3, did vote in the next parliament held by king James 4, as appears by the 8th act of his first parliament, of the edition of *Likprivik*. And likewise these who adhered to the queen regent in the beginning of the Reformation, and thereafter in the troubles of queen Mary, divers of them being noblemen of the highest condition, as the earls of Argyll, Glencairn and Cassils, the lord Home and Boyd, &c. though they proceeded to the highest acts of opposition, and some of them were at the battle of Langside, and indicted and held a parliament at Edinburgh, the same time that another was holden in the Canongate in the king's name, yet were so favourably construed, that Archibald earl of Argyll was in the list to be regent after the death of the earl of Lennox. And what were the happy effects of the moderation used towards them, it appeared by the happy and firm peace that followed, and by the loyal carriage both of them and their posterity ever thereafter. And therefore, for these reasons, and because prisoners have been exchanged in this war, it cannot be denied but the laws and benefit of quarters, being of the same nature, and founded upon the same principles of law and nations, should be received and practised in this war.

Whereas the inconvenience is represented and aggravated, if it should be in the power of private men to pardon the greatest offenders, a door should be opened to close malignants, to use the cautious way mentioned in the reply, to join in arms with the public traitors, upon hope that some of their own temper on the other side will be ready to give them quarters when an adverse wind blows. It is duplied, that the question is not of granting an absolute pardon, which is not craved by the defence of quarters, but a securing of the life of these who are taken: and if the defence of quarters should not be sustained, the repelling of it will open a greater door to all sort of cruelty, and to far greater inconvenience than that imaginary one in the

reply, seeing it cannot be thought that men will engage and expose themselves to hazard, upon confidence that they might, when they pleased, have recourse to their close friends for quarters, considering the difficulty to find them out in time of such confusion.

Where it is further replied, That if quarters be sustained, the whole nation, and especially the estates of parliament, will violate the oath of the covenant, and that other of the parliament anent the prosecution of malignants; and that there cannot be any impunity granted to delinquents by any private man. It is duplied, that though the oaths of covenant and parliament oblige the takers of these oaths to discover malignants, that they may be brought to trial, that they do not prejudice those who are called in question of their lawful defences, competent to them by the law of nations, as that of quarters; neither do they oblige the judges to repel such defences, seeing by the covenant they are not obliged to proceed against those who are questioned as malignants, notwithstanding of such defences. 2. The practice of the estates in some particular cases evinceth, that they do not think themselves so limited by the said oaths, as the replier would have, because they have before this condescended to the exchanging of divers prisoners, and have dismissed divers others who were in the like condition with me, being taken in the field, and have not only spared some who were on the other side, but have employed them thereafter. And it were absurd and injurious to charge upon the estates perjury and violation of their oaths, because of these practices, being founded upon the law of nations and good considerations.

3. The question is not of impunity granted by any private man in the field, as the reply bears, but of quarters granted by the laws of war and nations, which is authorized and approved by the lieutenant-general and commander in chief, the day of the conflict at Philiphaugh, in so far as he gave no command, discharging quarters to be given in general, but only discharging any to be given to the Irish; which exception of the Irish militates in favour of all others not excepted, *quia exceptio firmat regulam in non exceptis*.

Whereas it is further replied, That the estates of parliament are not to be ruled by the example of the parliament of England, but to judge before God, and to divert his wrath, by proceeding against delinquents, conform to the laws of this kingdom. It is answered, That the practice of England is urged, not as a rule to the estates of this kingdom to regulate their procedure by, but as an instance of the practice of nations, conform to the law of nations; which being received in England in this war, which is principally for obtaining the reformation of religion and settling the liberties of that country, ought with far greater reason to be received by us who were involved in that war, out of our desire to have the ends established there, after we had obtained the same ourselves.

Neither can the laws of this kingdom, and the mutual League and Covenant be still obtruded for the repelling of the defence of quarters, because there is no law of this kingdom discharging quarters to be granted or kept, neither any clause of the mutual League and Covenant against the same; otherwise the whole nation of England, and the estates there, should be involved in perjury, seeing they joined with us in the mutual League and Covenant, and, notwithstanding, think not themselves obliged to refuse quarters contrary to all nations.

Where it is urged by the replier, to make me odious, That the terror of the enemies of this kingdom is casten up and upbraided, and therefore if justice be done upon God's enemies, the Lord will let us see justice done upon the enemies of this kingdom. I am confident, that if my defence and expressions be considered, it will appear they cannot be wrested to import any upbraiding, or casting up of any terror; and whatever odious characters be put upon me, I cannot be thought to be an enemy to God, except it were shown that I had intended something against the honour of God, purity of religion, or the liberty of my country; for in civil combustions, the naked difference of opinion ament civil questions, and adhering of a subject to his prince, was never thought to be enmity against God. This is evident from the 2 Sam. chap. ii. ver. 26 and 27, for in that civil war between David and the house of Saul, though David (God's prophet, and anointed to be king) was on the one side with God's people, yet they who were upon the other side of Ishbosheth were not called enemies to God, but their brethren; and upon that respect Joab did not exhort them that were with him to pursue eagerly their adversaries, as God's enemies, but bid them return from following their brethren. And in chap. iv. ver. 11, David calleth Ishbosheth, though the head of that faction against him, a righteous person. Likewise, when it pleased God to work deliverances for his people, it was not conceived that there was a necessity to divert God's wrath, by proceeding in rigour against those who had fallen in their hands, but by the contrary, David, after that great victory against Absalom, being pressed to that purpose, answered, "Shall there any man be put to death in Israel?" 2 Sam. xix. 22. And Saul, after his victory against the Ammonites, when the people urged that they should be put to death who had been against Saul, and had said that he should not be king, he answered, "There shall not a man be put to death this day, for to-day the Lord hath wrought salvation in Israel." 1 Sam. xi. 13.

Where it is further replied, That the passage of Scripture cited in the defence, out of 2 Kings chap. vi. doth not confirm the law and practice of quarters, but that the prophet citeth a custom of the kings of Israel, which of itself is not allowable, being reprov'd by the spirit of God, in the case of Agag and Benhadad; and that that unlawful custom is alledged not to confirm the same, but to shew

what miracle the prophet had wrought. It is answered, That the text itself is opposed, whence it is clear, that the prophet useth an argument 'a majori; quasi dicat, ne eos quidem occideres quos abduceret gladio tuo et arcu tuo; ergo multo minus alieno beneficio comparatos fas est occidere.' So it is understood by Tremellius commenting upon that place, and Diodati in his annotations upon the same. And therefore the gloss of the reply, bearing that nothing is meant by the prophet but to shew what miracle he hath wrought, is absurd, seeing there needed no probation of that which was evident and undeniable; and is contrary to the express words of the text, which containeth a question moved by the king of Israel unto Elisha, whether he should smite the Syrians or not; and a negative answer of the prophet, that he should not, fortified with an argument by way of Euhymeine: 'capti in bello non sunt occidendi; ergo multo minus alieno beneficio et miraculo comparati.' Which should be an ill argument, if the antecedent were only founded upon an evil and reprov'd custom: and the prophet cannot be thought to use an ill custom, to enforce a good conclusion; it being as much against rules, both of goodness and good reasoning, to use an argument from that which is evil, to prove that which is good, as to do ill that good may come of it. And that it was not only the custom of the kings of Israel to spare captives, but an universal and antient custom of nations, it is evident, not only from innumerable passages, as well of the civil law, as of history, but from the 14th of Genesis, where it is clear, that these who were taken by Chedorlaomer were taken captives and carried away with Lot.

Where the reply bears, that the said custom is reprov'd in the case of Agag and Benhadad. It is answered, that for the first, it is acknowledged by the replier himself, that there was a great disparity betwixt the case of Agag, and of these who have gotten quarters, because Agag was in that condition, that he was incapable of quarters, in regard God commanded Saul expressly to go and smite Amalek, and destroy all that they had, and spare neither man, woman, infant, ox, or sheep; so that this was an extraordinary case of a person by God's command devoted to destruction, 1 Kings 15. As for the case of Benhadad, it is clear from the text, that he was appointed to destruction by the lord, for his arrogancy and blasphemy against God: and the word in the 42 verse chap. xx. of the 1st of Kings, used by the prophet when he told Ahab that he had let go a man whom God had appointed to utter destruction, "Anathemati devotum," as it is rendered by Tremellius, evinceth that there was an extraordinary warrant for destroying of Benhadad; because that word is only used in such cases, as when there was an extraordinary command to destroy and devote Jericho and Agag; 'nunc alii ut percutias Amalechum et anathemati devoveas.' which is likewise more clear from the whole context of 1 Kings

chap. xx, for after Benhadad was foiled the first time by Ahab, a prophet came to the king of Israel, and told him that the king of Syria would come up against him at the return of the year, and advised him to mark and see what he should do. And when the prophet came thereafter to Ahab, after he had dismissed Benhadad, to convince him, did suppose the case of a man that had brought to him a prisoner, and said 'keep this man,' and that upon condition, if by any means he should be missing, his life should be for his life. In which case there was an express charge given to keep the prisoner, and not let him go: which must be understood likewise in the true case of Benhadad, otherwise there should not be a parity between the cases; neither could Ahab have been convinced, but might have had an evasion and pretext, that he had not got the like charge, and that God's will concerning the destruction of Benhadad had not been intimated to him.

I humbly represent how hard it is that such arguments should be brought from extraordinary cases of blasphemous pagans, devoted and anathematized by God, and enforced upon people at such times and places, where they whom it concerns cannot make answer; whereas it may be evinced from diverse places of Scripture, what moderation was used in times of civil distraction, and that these who had been active, and leading on the other side, were not only spared, but advanced: witness the civil war betwixt the Israelites and the Benjamites; in which, though the cause was most unjust upon the Benjamites' part, and that they had provoked mightily the rest of the tribes, by reason of two great overthrowes they had given them; yet after the Israelites had got the better of them, their revenge went no further, than to kill such as they could overtake in the battle: but as for them that escaped to the rock Rimmon, they called peaceably to them, and notwithstanding of their oath, provided wives for them, and made up again the breach of that tribe. The fair quarters Abner and his men had from Joab (though in flying he had killed Asahel) is toucht before. Though Adonijah exalted himself against king Solomon, and usurped the kingdom, yet upon his submission he was spared and dismissed: so was cursed Shimei. Amasa captain of Absalom's host, was received in favour, and made captain over Judah. These and many more places clearly evince, that Scripture is on our side, and that not one passage thereof can be wrested against us.

Whereas it is replied, That quarters could not be granted to me, because I am excepted in the propositions of peace, and declared to be such a person as could expect no pardon. It is answered, first, The question is not of pardon, which is not craved, but of quarters already granted for securing my life: and the said propositions of peace, are not a positive declarator of my incapacity and exception in case of a happy peace, but only contains the desires and propositions of the estates to be

made to his majesty, which may be altered upon a mutual condescending betwixt his majesty and them, before they be settled by an act of pacification; and the said exception is only to take effect against such as should be processed and condemned, and therefore is to be understood without prejudice of their lawful defences, and namely that of quarters; seeing by no act of parliament, nor by the foresaid propositions, it is declared, that these who are excepted should be incapable of quarters, and of the benefit of the law of nations. And that this was not the intention of the estates of either kingdom, is clear by their practice; for notwithstanding of the said propositions contained in the said exception, some of these who are excepted, have been exchanged, as the laird of Drum younger with us, and col. Goreing and others in England.

DEFENCES for my lord Ogilvie, 10 February, 1646.

My Lords; I conceive that my answer to the dittay may be very short, and that I need not enter in a subtle dispute of law against it; the subject is so tender and ticklish, that I shall be loth to be put to the question, unless I be necessitate.

My answer then at this time is, that I conceive, that by the law of nations and by the law of war, I cannot be brought to answer a dittay of treason upon hazard of my life and estate, as long as I am in this condition; because I am a prisoner of war, and was taken by the Lancashire forces, with my sword in my hand, and upon quarters and assurance that my life, and such stuff and other things as I had about me, should be safe and unquestioned. War, albeit with its noise it seem to cry down all other laws, wants not its own necessary and inviolable laws, without which it should be rather a bloody and brutish butchery, than a lawful war, which God himself is pleased to own, entitling himself The God of hosts and battles. That the law of quarters amongst all other *jura belli*, is the most necessary and equitable, it cannot be called in question: the issues of life and of death are in God's hands, who is pleased to dispense with that which is called the fortune of war in so variable a way, that it may be justly said, 'Inter utrumque volat dubiis victoria pennis;' to the end, that neither side should refuse to the other that humanity and favour which they may have occasion possibly the next day to desire themselves. And it is not to be conceived that quarters consist in the favour only and grant of the giver, but as founded rather upon the equity and obligation of a mutual faction, whereby the receivers of quarters redeem their own safety, with the safety of more who would be in hazard upon the other side; it being always to be presumed, that men being prodigal of themselves, and despairing of their life and quarters, though in the end they may be overcome by multitudes, will sell their lives at a dearer rate, than those who would live to enjoy the victory would be

content to have it. This law, as in all other wars, so more especially is to be kept in civil dissensions, in regard the ties and interest both parties have in others, plead both for excusing those who are taken, by reason of interest they conceive they had to adhere to the side which they followed, and likewise for favour of those who have taken their friends, in respect of the interest they have in their prisoners. I may instance many practicks in these late troubles in England, but shall only remember one, because it is famous and notorious. One captain Lilburn was taken by some of his majesty's forces; the gentleman being both a parliament man and a commander, had been so active in both ways, that he wanted not powerful enemies, who upon probable grounds and motives, moved his majesty to put him to a trial for divers high points of treason. The gentleman alleged the inviolable privilege of a prisoner of war, and the law of nations, and that he could not be put to answer any charge, though never so just, until he were dismissed. General Ruthven, and all other soldiers of fortune did interpose themselves, and solicited that the law of war should not be violated. In end, justice did prevail with his majesty's all other respects, and the gentleman was upon the said ground acquit. Upon these grounds I conclude, that I am in the like case, and cannot be holden to answer to this dittay: And yet, lest I should seem to shadow myself only under the said privilege and defence, and that my actions may not appear still to your lordships so ugly and horrid as they look in my dittay, being represented naked, and without the vesture of the favourable circumstances and probable grounds and motives, and the sincerity of my intentions, whereupon they proceeded without any thought of treason or hostility: I have joined with this defence, a short and true Relation of my carriage in these late troubles, for information to your lordships.

**The RELATION of James Lord Ogilvie his Carriage in these late Troubles.**

Whatever the world may conceive of me and my carriage in the first and late troubles, my conscience bears me witness, and I may appeal to the knowledge of all those who have had the occasion to know me inwardly, how free I have ever been of disaffection either to the purity of religion established here, or to my native country; and that I never countenanced nor complied with any thing which was conceived to be a corruption neither in church or state, but was one of the first who petitioned for redress of the same during the first troubles, though some of our houses suffered the extremity of war and hostility: It cannot be instructed, that I appeared, in any hostile way, or did any act against my country. After the pacification of these troubles, the rebellion of Ireland having fallen out, I resolved to take hold of that occasion, to express to the world my constant zeal for religion and my country. And to that purpose there having past some

discourse betwixt general Lesley, and me, concerning the expedition for Ireland, which I conceived to imply an invitation to engage in that service; I sent therefore a gentleman of my own name, to show him, that I should be content to serve in that war, upon such terms as others of my quality were to have. But having found, that the general had not absolute power to dispose of places, and to prefer officers; and not presuming to have the like way and favour with others who had a vote in the disposing of them, I retired and lived quietly at home, without any meddling, until the combustions in England broke out, and came to such height, that they were like to involve this kingdom, and to occasion a rupture betwixt his majesty and us. Then I began to bethink myself what my carriage should be: and in end I thought it best to keep myself free, and to convoy myself out of his majesty's dominions, until it should please God to put an end to these unhappy differences. Upon this resolution I went to England intending thence to go to France; but having gone to take leave of his majesty, I was commanded to stay and wait upon him. Being his majesty's subject, and commanded to wait upon his royal person, at such a time, when he was in distress and hazard, I neither did, nor can conceive how I could disobey, without rubbing upon myself the imputation both of disloyalty and baseness. This country at that time had not entered in covenant with the parliament of England: I know not any law obliging Scots-men his majesty's native subjects, trusted by his majesty in places of respect and eminence about his person, wherein they may be useful to their country, to desert his majesty's person and their places, upon any occasion of rupture betwixt his majesty and his subjects of England. I conceive then, that his majesty's command did oblige me as well as others to wait upon his person. The article of the treaty, which I am charged to have contravened (though I profess I was altogether ignorant of it, holding it no shame for one of my way to be unacquainted with some particular laws) appears to me, having looked upon it upon this occasion, not to mean or include the case of personal attendance, and service of private subjects, who in a private and personal way, adhere to his majesty in the time of troubles and question with his people of England, as I did: For I went to England without forces, yea without my ordinary train, and accompanied only with one servant. During my being in the South, I had no charge but to wait upon his majesty; I neither commanded forces, nor was introlled in any regiment, or under the command of any.

This was my carriage in the South, until my master commanded me, with Montrose and all our countrymen who were about him, to go homeward. The marquis of Newcastle being then in the fields with an army for his majesty, I could not have passed without seeing of him; my stay with him was so short, that I neither

had, nor could have had any charge or employment under him. I do not deny but I came to this country, but I profess it was by his majesty's express warrant and command, and without any sinister intention against my country and countrymen. I came to Dumfries without any purpose of hostility, but only to accommodate myself: and I believe none can complain of any injury done at that time by me. Finding that the country was displeased, I returned immediately, without doing harm to any. After my return I was necessary to neither of these exploits libelled in the ditty, of taking of Morpeth and the Sheills; neither was I present at either of these places when they were taken: but I am able to make good, that I was at Newcastle at 6 or 7 o'clock at night, that day the castle of Morpeth was taken, it being taken at 1 or 2 o'clock in the afternoon: And having heard at Newcastle that it was taken, and being solicitous for my countrymen, that they should not have been well treated by the English, who had been irritated by them, in regard they had lost some men of quality at the place, I went of purpose at 7 o'clock at night from Newcastle, to procure favour to them; and I am confident, that these whom I found there will not deny, that they received such tokens of my favour as they stood in need of, and as I at that time was able to give. I neither had, nor could have had any employment under colonel Slavinger, being a gentleman beneath my own quality.

When it was my fortune to be taken, it was not in any service or hostile intencion, but being upon my way to his majesty, with such a small number of people as appeared afterwards not to be sufficient for a convoy, I was surprized and forced to bestir myself for my just defence, and safety of my life, wherein it pleased God so to assist me, that these who were at the taking of me, were content to offer and give me quarters; whereupon I suffered myself to be taken, and doubt not but that I may expect, that the law of nations and war, which is observed as sacred and inviolable, when all other laws are silent *inter arma*, shall not be broken in my behalf.

This is the true relation of my carriage in these troublesome times: for my carriage before I should be sparing to speak of it myself, if my after actions were not painted with so foul and ugly colours. To my knowledge, before these times, it cannot be condescended that I have offended any by any scandalous or injurious act. And I am confident, that with God's assistance I might have regulate so the whole course of my life to the end; that I should not have seemed to have failed to any, much less in my duty either to my prince or country, if the times had not fallen out so irregular, that I could not witness my respect to either, without seeming to fail to the other. It being then my misfortune to have fallen in such hard times, having so much interest on both sides, I have not been suffered to have been an idle spectator; I followed the light of my conscience,

which bindeth even when it is mistaken, as divines hold. I believe none will suspect me to have been a contriver, plotter or fomentor of this unnatural war, and am assured, that if from this relation it may appear, that I have been in any wise an actor, there was never one more harmless. None of my countrymen may charge me with any act of insolency, wrong or prejudice to them; and I doubt not but some will bear me witness, that I have shown them favour. Though I conceived, that my adhering to my prince in his distress by his special command, was incumbent to me by my oath of allegiance, and in duty, conscience and honour; yet if any thing may be thought to have escaped me, being a young man, and not acquainted with subtillies and laws, in a business of so tender a nature, which hath, both in the dispute of the question in the general, and in this particular case, divided so many lawyers, statesmen, divines, and others, in their opinions, and hath set a-work their tongues, pens and swords, to maintain the same, I may say with far better reason than an old statesman and lawyer did in the like case of civil dissensions; 'Erat obscuritas, erat certamen inter clarissimas duces: multi dubitabant quod optimum esset, et si aliquâ culpâ tenemur erroris humanita scelere certi liberi sumus.'

#### DEFENCES for Ogilvie.

It is answered, That he cannot be called in question of life and fortune, and forced to answer at this time to this ditty; because he is prisoner of war taken upon quarters, and express capitulation with his takers for his safety; and by the law and received customs of all nations, where war is not turned in a downright butchery, there be *jura belli* held sacred and inviolable: whereof a main one is "*captivus parcendum, et sicut resistenti violentia redditur, ita captivo misericordia debetur*," which are, Augustin's words repeated in C. 3, 23 4, 1. "*Danda enim est ad minimum vita his qui vitam hostibus et captivibus reliquerunt*." This was the law of Lycurgus, of the Romans, and other warlike nations, as is clear from history and writers, *de jure belli*. It is founded not only upon common equity, but upon the special equity of an express paction, where any capitulation is made; and where there is no express capitulation, it is founded upon a tacite and presumed paction, '*nam qui hostem non interficit, sed capit, videtur velle eum vivum habere: et capto est jus ex tacita pollicitatione ne possit postea interfici, et quise dedit cum hoste pacisci de vita videtur*:' especially where captives have rendered themselves in arms, '*qui pugnando potuerunt non capi, aut non sine sanguine*.'

Scripture itself confirmeth this law and practice: for the Syrians being stricken blind, and brought captives by Elisha, to the king of Israel at Samaria, he enquires at Elisha, whether he should smite them or not? He answers negative, saying "Would thou smite those whom thou hast taken with thy sword and bow?"

This law thus confirmed, is most observable in a civil war, betwixt a prince professing nothing but the maintenance of his just power, without prejudice of religion, and his people's liberties, to whom adheres a part of his subjects : and his people on the other side professing loyalty to his majesty, maintenance and reformation of religion, betwixt whom there is a concurrence of so many relations and interests public and private, as not only quarters, but exchange of prisoners, both flowing from one fountain, should necessarily be observed. This is the case of our unnatural war : prisoners have been exchanged : and it should be a stain to the kirk and kingdom, if quarters should not be inviolably kept. The consequence also may prove dangerous, the fortune of war being ambulatory ; what is now the defender's case, may possibly be the condition of others who appear secure for the present.

The history of wars betwixt the Swedes and Russians sheweth, That these nations who at first have been so full of animosity as to refuse quarters, finding in the progress so great inconveniences to follow, have been forced to acknowledge the necessity.

And therefore the defender upon quarters, having rendered himself, cannot now be processed upon life and fortune ; but before any procedure whatsoever, he ought to be dismissed and convoyed to a place of safety.

#### ANSWERS to the Lord Ogilvie his Defences.

The first defence founded upon the course of martial law, in giving quarters and conditions to parties taken, and keeping of the samens, can have no place for freeing of my lord Ogilvie from answering to the crimes contained in his dittay. 1. Because the crimes whereupon he is challenged are these which were not only committed by him before his apprehending, but also for which he was cited to compare before the parliament, long before his apprehending, and from trial whereof he did withdraw himself by flying to England ; wherein no accident occurring to him occasioned by his own misdemeanor can furnish to him any shadow of excuse. 2. The benefit of quarters founded upon martial law, is only considerable, when the samens are granted in *ipso procinctu*, and by those having power, neither of which my lord has, nor can alledge ; but by the contrary in his defences, he grants that he was not in any service, but upon his way to his majesty. Likens, they who took him found about him certain instructions from the earl of Montrose to his majesty, whereof the copies were sent to the committee of estates. 3. By the martial law, the quarters alledged given, cannot be further extended, than to the freedom from all challenges within that kingdom, within which the quarters were granted : and my lord being taken in England, might have had some colour (having cleared and verified the quarters made to him) to have craved the benefit of the martial law, which either he has not craved, or if craved, has been judged to be unjust ; because

the estates of the kingdom where he was taken have transmitted him to the estates of this kingdom whereof he is a subject.

*Item.* As to the second part of my lord's defence, which is anent his carriage, opposes the dittay and probation thereof.

February 19, 1645. This day about half hour to ten in the forenoon, their replies given in by the procurators of estates for eliding of the defences given in by the late lord Ogilvie are delivered to him about ten of the clock, before noon, and ordains him to give in his duplies, together with all other defences he has, either in the principal cause, or against the probation, against Friday at two o'clock in the afternoon.

**REASONS why the Defenders cannot be urged to give in any other Defences, till that of Quarters be discussed.**

First, the defence proponed is inconsistent with other defences, because the defence is, that the defender is not obliged to answer at all to a dittay, so long as he is in this condition, for the reasons adduced in the defence ; and therefore he cannot be urged to give in other defences. For albeit defences in *causa* may be proponed together, yet a defence of this nature, which is not an exception in *meritis causæ*, but is exclusive of process, '*et quæ impedit litis ingressum*,' cannot consist with other defences in *causæ*, because the proponing of other defences would be a tacite passing from the same ; and the defender is in the like case, as if being pursued before the justice, he would alledge to a remission ; in which case, he could not be urged in justice or form of process, to give in other defences before the said defences were discussed.

2. This defence is so material, that if it be found relevant, as it ought to be, the defender will possibly use no other defences at all ; and he is so confident of the relevancy of it, that he has not thought upon, nor desired his advocates to think upon his other defences in *causæ*.

3. It is not usual before any judicatory to cause the defender give in all his defences at first, especially where a material defence elusory of the instance is proponed, which before giving in of any other defences should be answered and discussed.

**ANSWERS to the Reasons given in by James Ogilvie, Milliam Murray, Sir Robert Spotiswood, and Nathaniel Gordon, why they cannot be urged to give in any other Defences, till that Defence anent Quarters be discussed.**

To the first reason, where it bears, that the defence of quarters is exclusive of process, '*et impedit litis ingressum*.' It is answered, That the defence of quarters is not exclusive of process, '*nec impedit litis ingressum*,' because albeit it were sustained to the defenders, that these who are taken in war, and get the benefit of quarters, cannot be killed or slain ; yet they who are taken in *bellu* (albeit quarters

were granted to be lawful, which is denied (*in nostro casu*) are still *captivi*; and being captives, the procurators of the estates, in name of the public, may crave process against the captives, 'ut iudex procedat ad sententiam,' that it may be clear to the world that the captives are guilty of such and such crimes; which guilt is neither pardoned, nor taken away by the giving of quarters (albeit it were granted that quarters were lawful *in hoc casu*, as it is not, as shall be cleared in the discussing of the defence founded upon quarters), but the giving of quarters 'impedit tantummodo executionem sententie, eamque parialem duntaxat quatenus ea est extendenda ad vitam;' but impedes not the criminal pursuit itself, whereby it is craved to be found that the delinquents have committed such and such crimes.

And where the foresaid first reason bears, That the defence of quarters cannot consist with the other defences *in causa*, because the proposing of other defences should be a tacit passing from the same. It is answered, the reason of the foresaid inconsistency is not relevant; for albeit the proposing of other defences before the defence founded upon quarters might seem to the defenders to prejudice the defence of quarters, as they conceive the defence of quarters to be "*contra litem ingressum*" (which it is not, for the answer above-written); yet proposing of the rest of the peremptory defences *simul et semel* with the defence of quarters, the defence of quarters preceding cannot be a passing from that defence which is proposed '*primo loco et per expressum*;' but to eschew cavillation, the defenders procurators know very well, that they may propose the rest of the peremptors with this caution (adhering to the defence of quarters, and may protest that the proposing of the rest shall not prejudice them of the defence of quarters), like as the procurators of estates declare, that the proposing of the rest of the defences shall not prejudice their defence of quarters, but the same shall receive its own answer with the rest.

To the last part of the first reason founded upon the *simile* of a remission. It is answered, That the same cannot be respected, 1. Because an alledgeance upon a remission was never alledged, but where it was instantly verified by production of the remission. 2. A remission '*perimit totam instantiam*,' for it frees the defender from all sentence, or execution, of the crime laid to his charge: and it is truly '*contra a litem ingressum*,' because it discharges the judges to proceed. But the defence of quarters is as above written, '*nulum processum partem impedit*,' but is only effective, when the sentence of the process is to be put to execution.

To the second reason, bearing, That if the defence of quarters be sustained to the defenders as relevant, whereof they are confident, that possibly they will use no other defences at all. It is answered, The procurators of estates are not to make answer to any thing

that the defenders mind possibly to do; but this answer they make, that this same may be alledged in all other peremptory defences: for if any peremptory defence be sustained relevant and proven, the defender needs propose no other defences; which is absurd, unless they will omit the proposing of them upon their own peril, seeing it has ever been the custom of all commissions from the parliament, that all the defences are proposed together, as has been in use to be proposed before the justice.

To the third and last reason, opposes the custom of the justice court, and of all preceding commissions flowing from the parliament for trying of delinquents. For before the justice court, the justice usually urges the pannall's procurators to propose all the defences, unless sometimes the king's advocat, for his own behoof, and in favours of the pursuer, will make a reply to a peremptor, before he hear the rest proposed: and before the commissions of parliament for trying of delinquents, it has been always the custom to propose all the defences together. And where the said third reason bears, that a material defence elusory of the instance, ought to be discussed before the defenders be urged to propose any further defences. It is answered, 1. That the defence of quarters is not elusory of the process, or any part thereof. 2. All total exceptions are elusory of the instance. And therefore, in no case in the defenders judgment, can the defenders be urged to propose their peremptory defences '*simul et semel: quod est absurdum*.' 9th December, 1645. Sent at half past one of the clock.

DUPRIES for Ogilvie, William Murray, Sir Robert Spotiswood, and Nathaniel Gordon.

To the answer to the first alledgeance, it is duplied; that the defence founded upon quarters, not only impedes the execution of the sentence, but elides the very proposition of the libel, and impedes the sentence itself, at the least in so far as the proposition of the libel carries, that whosoever are art and part of the crimes libelled, incur the pain of treason, and fore-faulture of life: which is expressly libelled in the proposition of their libel. And the life being the greatest of all pains, a defence alledged for safety thereof, and elusory of that part of the proposition and conclusion foresaid against the sainen, should first, and *per se* be discussed: especially in regard that the defenders are very loth to entangle themselves in a dispute with the estates concerning the relevancy of the libel, wherein many tender points may occur to be agitate, and it should tend to an unnecessary protracting of them, if the defenders should be forced to give in all their defences; which the defenders procurators have not as yet thought on, being confident that the defence upon quarters will be found relevant, and carry that whereof the defenders should be most careful, viz. Safety of their life. And it is known, that before

the justice, and other inferior judicatories, defences are most frequently proponed and discussed in the same order. And it is time, after this material defence shall be discussed, then to urge the defenders to give in all their defences. Likeas, in the former process pursued against Ogilvie, there being one of the same nature given in by him; there past in that process, replies, duplies, triplies, and quadruples, before he was urged to give in any further defences.

*Secundo*, Whereas it is alledged, That in all commissions from the parliament, it has been the custom to propone all defences together, just as before the justice general. The defender denies any such custom; but by the contrary defences have severally, and without cumulation, been proponed and discussed, as in Ochiltry's process, Toschock's, Meldrum's, and many others.

The same duply the defenders repeat against the remanent members of the reply: and humbly represents to the honourable lords of the committee the expediency of discussing of this defence *primo loco*, seeing the discussing thereof in their favours (which they expect) will shorten the process, and make them ready to give all possible content to the estates, and no wise to vex them with many more defences, or tedious dispute.

**The Report from the Commissioners for the Process of the Parliament against Sir Robert Spotiswood.**

At Sanct-Andrews the eighth day of January one thousand six hundredth and forty-six years, the lords and other commissioners under written, appointed by the estates of parliament for the process, they are to say, William earl Marishal, William earl of Glencairn, John earl of Cassils, John earl of Weymes, Robert lord Burghly, James lord Coupar, sir Archibald Johnston of Wariston, one of the lords of session, sir William Cochran of Collduon, Mr. George Dundass of Maner, sir Thomas Ruthven of Frieland, sir John Weyms of Bogie, James Mackdougall of Gartland, John Kennedy burges of Air, George Gairden burges of Bruntisland, Mr. Robert Cunningham burges of Kinghorn, Mr. Robert Barclay, burges of Irwing, William Glendinnin burges of Kirkdubright, Mr. James Campbel burges of Dumbarton, and Mr. Alexander Colvil of Blair, one of his majesty's justice deutes, not as ordinary judge in the office of justiciary, but as one of the commissioners delegate by the saids estates of parliament with the remanent commissioners foresaid, Anent the dittay given in by Mr. Roger Mowat, Mr. James Baird, and Thomas Nicolson, procurators for the estates of this kingdom to sir Robert Spotiswood, 'Makand' mention, &c. as in the Dittay itself is more fully contained. The said Mr. Roger Mowat, Mr. James Baird, and Mr. Thomas Nicolson procurators for the saids estates, 'compearand' personally, who for instructing of the points of the said dittay produced the foresaid commis-

sion granted by the king's majesty to the said James Graham, making and constituting him lieutenant governor and captain general of all the forces raised or to be raised within this kingdom; and giving him power and authority to raise and levy forces within this kingdom, and to lead and conduct them against the forces raised and levied by authority of the estates of parliament of this kingdom, as the samen of the date, tenor and contents foresaid, signeted, docketed and subscribed by the said sir Robert, at more length bears. And likewise produced the foresaid proclamation for holding of parliaments within this kingdom, together with the foresaid commission granted by his majesty, to the said James Graham to be commissioner for his majesty for holding of the said parliament, as the samen of the tenor and contents foresaid, docketed and subscribed by the said sir Robert, also at more length bears. And in like manner likewise produced the foresaid missive letter written by the said sir Robert Spotiswood during his being with the said James Graham, to some of the noblemen about the king's person in England, as the samen of the date, tenor and contents foresaid, subscribed by the said sir Robert, likewise at more length bears. And the said sir Robert Spotiswood defender 'compearand' personally, who acknowledged judicially the signeting of the foresaid first commission, and the docketing and subscription thereof; the docketing and subscribing of the foresaid proclamation, and second commission to the said James Graham for holding of the parliament; and the foresaid missive letter and subscription thereof, to be all the said sir Robert's own proper hand-write; whereupon the saids procurators of estates asked instruments. Thereafter the rights, reasons and allegations, together with the alledgances, replies and duplies given in by the said parties *hinc inde*, with the hail writs foresaid, and other probation deduced by the saids procurators of estates, being at length heard, seen and considered by the saids commissioners, and they being therewith ripely advised, the saids commissioners according to the power and authority given to them by the saids estates of parliament, makes their report as follows, viz. They find the said dittay founded upon the foresaid act of parliament made in May 1584, anent the impugning the dignity and authority of the estates of parliament, seeking or procuring the innovation or diminution of the power of the samen, being subsumed upon, and qualified in manner contained in the said dittay, relevant to infer against the said defender any arbitrary censure or punishment the saids estates of parliament shall think expedient. And in the like manner find the said dittay founded upon the act of parliament above-written made in June 1644, anent the taking up of arms against the kingdom and estates of the country, relevant to infer the conclusion contained in the said act, notwithstanding of the hail defences and duplies proponed for the part of the said sir Robert in the

contrary. And repels the defence founded upon quarters proponed by the said sir Robert, as the samens is proponed by him against the said dittay, to stay and impede the foresaid commissioners to proceed to discuss the relevancy and probation of the said dittay. But the said commissioners remits and refers the saids defences given in by the said sir Robert or James Ogilvie, to which the said sir Robert adheres, and which he repeats founded upon quarters, to be discussed and decided by the honourable estates of parliament before the pronouncing of any sentence of condemnation to follow here-upon. And finds that member of the assumption of the said dittay, bearing sir Robert has docketed and subscribed with his hand, signeted with the signet of the office of secretary, the foresaid commission granted to the said James Graham upon the first of June 1645, for raising and levying of forces within this kingdom, leading and commanding them against the forces raised and levied by authority of the estates of parliament, and sikk-like, bearing that the said sir Robert Spotiswood has docketed and subscribed with his hand the foresaid commission granted by his majesty to James Graham, to be commissioner for his majesty for holding the said pretended parliament, sufficiently proven against the said sir Robert, to infer any arbitrary censure or punishment the foresaid estates of parliament shall think fit. And in like manner find that member of the said assumption of the foresaid dittay, bearing that the said sir Robert has joined himself with the said James Graham and his rebellious army, and his being with him at acts of hostility committed by him in the month of September last, at the battel of Philiphaugh, being taken in the battel, and his sword drawn in his hand; and so having taken up arms against the kingdom and estates of the country, sufficiently proven against the said sir Robert, to infer the pain and punishment of treason, and that therethorow he is punishable by forfeiture of life, lands and goods, or any other censure the parliament shall please to inflict, the defence of quarters being first discuss as aforesaid. *Sic subscribitur*, CASMILS I. P. D. Com.

13th January, 1646.

Read in Audience of the Parliament, and remitted to the several Bodies.

The estates of parliament having heard the whole dispute contained in the alledgeance, reply and duple, above and aback written, founded upon the exception of quarters, proponed for sir Robert Spotiswood, Nathaniel Gordon, William Murray, and Mr. Andrew Guthrie, and after full reading of the samens bail dispute in plain parliament, and after full debate there, the saids estates repel the alledgeance and duple contained in this paper, and in the other papers produced, in respect of the reply proponed for eliding of the alledgeance; whereupon Mr. Thomas Nicolson, one of the procurators for the estates, asked instru-

ments. *Sic subscribitur*, CRAWFURD LINDSAY, I. P. D. Parl.

16 January, 1646.

The report above written produced from the commission for the process, against sir Robert Spotiswood, together with the interlocutor of parliament given this day, repelling the defence and duple proponed by him, founded upon quarters, in respect of the reply proponed for eliding of the same defence, being read, heard, considered and advised by the estates of parliament; they approve the same report and interlocutor of parliament foresaid, and find and declare that the said sir Robert Spotiswood has incurred the capital punishment of death, in respect the Dittay founded upon the act of parliament in May, 1584, is found relevant and proven against him by the foresaid report. And als find and declare, That the said sir Robert Spotiswood has incurred the pain and punishment of treason, and forfeiture of his life, lands and goods, in respect the Dittay founded upon the act of parliament made in June, 1644, anent the taking up of arms against the kingdom and estates of this country, is also found relevant and proven against him by the report above specified. And therefore the estates declare him a traitor to this kingdom and estates thereof, and forfait him in life, lands and goods, to be applied to the use of the public; and ordain his arms to be riven, and delete out of the book of arms, and himself to be execute to the death, by striking of his head from his shoulders at the Mercat Cross of St. Andrews, upon Tuesday next, the 20th day of January instant, at 12 o'clock that day, and ordain the magistrates of St. Andrews to see the same done. *Sic subscribitur*, CRAWFURD LINDSAY, I. P. D. Par.

The Procurators of the States presented to the Commissioners, the Form and Directory for proving Sir Robert Spotiswood's Dittay.

St. Andrews, 27 December, 1645, The Subsumption of Sir Robert Spotiswood's Dittay, in the several Members and Aggravations thereof libelled, is proven as after follows.

The gracious favour mentioned in his Dittay granted by the estates of parliament in 1641, is contained in the 33rd act of king Charles his second parliament dated the 16th of November, 1641.

The nomination of the earl of Lanerk to be secretary by the king's majesty and parliament is proven by the act of king Charles his second parliament in 1642.

The king's majesty's declaration anent the Defender is in the act of king Charles his parliament in 1641.

The Defender his docketing and signeting of the two commissions, and of the proclamation mentioned in the Defender his Dittay, are proven by the saids two commissions and proclamation produced.

The Defender his joining with James Gra-

ham and his army is proven by his own declaration of the second of January, 1646.

The writing of the Letter by the Defender of the date the 10th of September, 1645, is proven by the production of the letter.

DOUBLE of the King's Majesty his Commission to the Marquis of Montrose, to be Lieutenant-Governor, and General of all his Majesty's Forces in Scotland.

C. R. Charles by the grace of God, king of Great Britain, France and Ireland, defender of the faith, &c. To our right trusty and right entirely beloved cousin James, marquis of Montrose, greeting. Whereas divers traitorous and seditious persons of our kingdom of Scotland, have levied war against us, and to the manifest forfeiture of their allegiance, and the breach of the act of pacification, lately made between the two kingdoms, have invaded our kingdom of England, and possessed themselves in divers places therein, to the great disturbance of our peace, and the destruction and spoil of our people: And yet further, if no course be taken by us to prevent that, intend to make a new invasion upon this our kingdom, and bring in forces for the assistance of the rebels here. Know ye therefore, that we reposing especial trust and confidence in your approved wisdom, courage, fidelity and great ability, whereof you have given hitherto most extraordinary and undeniable proof, do by these presents name, constitute, ordain and authorise you the said James, marquis of Montrose, to be our Lieutenant Governor, and Captain General of all our forces raised, or to be raised in our kingdom of Scotland, and of, and over all others brought, or to be brought thither out of our kingdom of England and Ireland, or from any part whatsoever. And we hereby give you power and authority to raise and levy forces meet and apt for the wars within all the parts of our said kingdom of Scotland, and to command and enjoin the sheriff lieutenants, magistrates of cities and towns, and all others having power and authority under us, within every several county of our said kingdom, to send, or cause to be sent unto you such number of our said subjects apt and meet for the war, to such place, or places, And at such time as you shall think expedient. And we do further by these presents, give you full power and authority to put in readiness the persons so by you raised, or to be raised, levied, or assembled, sent, conducted, or brought unto you; and them, from time to time, to arm, lead and conduct against all and singular enemies, rebels and traitors, and every of their adherents attempting any thing against us, our crown and dignity, within any part of the said kingdom; and the saids enemies, rebels and traitors, to invade, pursue, repress, and in case of opposition or resistance, to slay, kill, and put to execution of death, by all ways and means, according to your good discretion: And to do, fulfil and execute all and singular other things, which shall be requisite for the

levying, conducting and government of the said forces, particularly to make, constitute and ordain laws, ordinances and proclamations from time to time, as the case shall require, for the good government and order of all the forces that are, or shall be under your command; and the same also, and every one of them to cause to be duly proclaimed, performed and executed. And likewise to punish all mutinies, tumults, rapines, murders, and all other crimes and misdemeanors of any person under your command in your army, according to the course and custom of the wars and the laws of the land. As also for us, and in our name, as you in your discretion shall think fit, to save such as you please of these traitors, rebels, and offenders as shall be apprehended or brought unto prison, and make tender of our royal grace and pardon to such of them as shall submit to us, and desire to receive our mercy. And further, we do give unto you full power and authority, for the better execution of this our commission, to appoint and assign all commanders and officers necessary and requisite for the government and command of our saids forces, and to command all cities, towns, castles and forts within our said kingdom of Scotland, to place governors and commanders within the same, and to remove, displace or continue such as are in any of them already, according as you shall think meet for the good of our service, and safety of that our kingdom. And our further will and pleasure is, and we do by these presents give unto you full power and authority, not only to repress and subdue such as are in arms against us within our said kingdom of Scotland, but also to advance your forces into such parts of our kingdom of England, or any other of our dominions as are infested and oppressed by any of our Scottish subjects already brought, or hereafter to be brought in for assisting the rebels of this kingdom, and there to pursue and beat out of such towns, castles and forts, as they have got possession of, without any part of our said kingdom of England, or other our dominions, to recover the same for our use, and to relieve and free our English subjects, and others, from the heavy yoke that by that means lieth upon them. And because of the ample testimony you have given us of your singular wisdom and fidelity in the ordering and disposing of our great and weighty affairs hitherto, to the end you may reward and encourage such as have given, or shall give assistance unto you towards the advancement of our service; We do hereby give unto you full power and authority from time to time to confer the title, degree and honour of knighthood upon such persons, either natives or others employed under your charge and command, whom you in your discretion shall conceive fit to receive the same; and whatsoever you shall do herein, according to the true intent and meaning of these presents, we do for us, our heirs and successors, ratify and confirm upon the great trust and confidence which we repose in you, that ye will make

such use of this power given to you as may best conduce to the advancement of our service, and honour. Wherefore we will and command you our said lieutenant-governor, with all diligence duly to execute the premises with effect. And whatsoever you shall do by virtue of this our commission, and according to the tenor and effect of the same, touching the execution of the premises, or any part thereof, you shall be for the same discharged, by these presents in that behalf against us, our heirs and successors. And therefore we will and command all and singular our subjects within this our said kingdom of Scotland, of whatsoever degree and quality, whether noblemen, gentlemen, burgesses, magistrates in the country or towns, privy-counsellors, officers of state militant, commanders and soldiers, to whom it shall appertain, that they and every of them shall be from time to time attendant, aiding, assisting and helping to you, and at the commandment of you as aforesaid in the due execution hereof, and that they diligently and faithfully perform and execute such commands as you shall from time to time give them for our service, as they and every of them tender our displeasure, and will answer the contrary at their utmost perils. And these presents shall have continuance during our pleasure, and ever while they be expressly revoked by us. Given under our sign manuel, and privy signet: At our court at Hereford the twenty-fifth of June 1645, and of our reign the one-and-twentieth.

May it please your majesty; This is a double of the former commission granted by your majesty to the marquis of Montrose, to be lieutenant-governor and general of all your majesty's forces in Scotland.

ROBERT SPOTISWOOD.

Follows the King's majesty his PROCLAMATION for calling a Parliament.

C. R. Charles by the grace of God, of Great Britain, France and Ireland king, defender of the Faith, &c. To our Lovits, Lyon king of arms, heralds, pursevants, messengers and officers at arms, our sheriffs in that part, conjunctly and severally greeting. Whereas by the seventh act in the first session of our late parliament in that our kingdom, we with advice of our estates there, did statute and ordain that in every three years, once at least, a parliament should be kept within that our kingdom, in such a convenient place and time as we with advice aforesaid should at the close of every parliament determine and appoint; likeas by the last act of our said late parliament, it was appointed, that the next triennial parliament should meet and convene at Edinburgh upon the first Tuesday of June last 1644. Which date, in regard of the great distempers both of this and that kingdom, we could not keep at that time, neither in our own person nor by our commissioner. But now amidst the many and weighty affairs we have in hand, not laying aside the care of that our antient and native kingdom, we have

thought good not to frustrate any longer the expectation and desires that our good subjects there may have of such a parliament; and that the rather, lest any of them should be abused in thinking, that we do or ever intend to acknowledge for lawful the meeting begun at Edinburgh the first Tuesday of June last, and continued since under the name of a parliament; which howsoever the appointing of it to convene by us at that day and place, might have been a sufficient warrant to them for their first meeting; yet to continue the same in absence of us, or some one at least to represent our royal person amongst them, and by themselves, without our concurring authority to make pretended laws and ordinances is such a presumption as we are resolved never to endure. For these therefore and other causes us moving, but chiefly out of the tender affection we carry to that our native kingdom, the present distracted estate whereof we much pity, and think it cannot better be remedied than by the wisdom and authority of a lawful and free parliament, by whose counsel and advice we will be governed in what may conduce to the perfect settling of peace and tranquility there. We will and require you and every one of you conjunctly and severally to pass to the Mercat-Cross of our town of \_\_\_\_\_ and there by open reading of this our proclamation, summoned and warn all and sundry dukes, marquises, earls, viscounts and lords within that our kingdom, to give their personal appearance within the

of our said town of \_\_\_\_\_ the day of \_\_\_\_\_ next, where and when we intend to hold our high-court of parliament by ourself or our commissioner to be appointed by us for that effect; as also that ye make intimation of and warning to the sheriffs and freeholders of every shire within that our kingdom, and to the magistrates of all our burroughs royal within the same, having place and voice in parliaments to elect and choose commissioners to be sent from their several shires and burroughs respective, that they may give their opinion and counsel in such things as shall be proposed in the said parliament, and concur with our nobility aforesaid, to make such acts and statutes as may conduce most to the peace and welfare of that kingdom, and shall be approved and ratified by us or our commissioners aforesaid in our name: Likeas we will and command you to intimate publicly to all our lieges of whatsoever quality and condition, that may have any suits complaints or grievances to be represented to us in parliament, that they resort for that effect to our said town of \_\_\_\_\_ at the day aforesaid, and have their recourse no where else within that our kingdom, especially to the pretended parliament kept by the rebels there at Edinburgh, as they would not have of us in esteem of them as persons disaffected to our royal person and government. Furthermore, it is our pleasure, that this being done, you pass immediately to the Mercat-Crosses of all the head-burroughs within every several

shire of that our kingdom, (or at least to so many of them as are presently under our obedience) and publish this our proclamation; provided always, that the publication thereof at the Mercat-Cross of our said town of alienarly shall be a sufficient intimation to all our lieges to repair thither; and that such of our nobility and commissioners of shires and burroughs as shall compear and attend upon us or our commissioner at the day and place appointed hereby, shall have power with the consent and approbation of us or our commissioner foresaid, to make laws and acts of parliament, that shall bind all our subjects of that kingdom in the same manner that any preceding acts of parliament, either in our time or our predecessors, have done: And that you report this duly execute and indorsed day and place above written, as you and every one of you will answer upon your perils; whereanent these presents shall be a sufficient warrant. Given under our royal hand and signet at

May it please your majesty; This is a proclamation for calling of a parliament to meet in the town of                    upon the                    day of                    next. ROBERT SPOTISWOOD.

Follows the King's Majesty his Commission to James Marquis of Montrose, to be Commissioner to the foresaid Parliament.

C. R. Charles, by the grace of God, king of Great Britain, France, and Ireland, defender of the faith, &c. To our right trusty and right entirely beloved cousin, James Marquis of Montrose, lieutenant governor of our kingdom of Scotland, greeting. Whereas, for the settling of the present distractions within that our kingdom, we have thought fit to call a parliament, which is to meet and begin the                    day of                    next, within our town of                    And in regard of the great and weighty affairs we are taken up with here at this time, we not being able to be present in our own person at that meeting; therefore we, reposing a special trust and confidence in your approved wisdom and fidelity, do by these presents name, constitute and ordain you our commissioner at the said parliament, authorizing you, at the day and place above mentioned, for us and in our name to meet and convene with such of our nobility and commissioners of shires and boroughs as shall give their appearance for holding of our high court of parliament in our said town of                    there to advise and consult with our said nobility and others, of all such things as may tend to the peace and welfare of that our kingdom; and in our name to propose unto them such things as you shall think expedient to be enacted in our said parliament, which may conduce to the good of our service and happy state of our said kingdom: giving you hereby full power and authority for us and in our name to approve and ratify all such acts and statutes as shall be agreed upon by you and them, and to give them the strength of laws to bind and oblige all and whatsoever our subjects of that kingdom; with power also to you

to adjourn and continue the said parliament from time to time, or to dissolve the same as you shall find it meet and expedient; and generally to do all and every thing that any commissioner from us heretofore hath had power and authority to do. Likess also we give you full power and authority, in absence of our chancellor, to appoint a vice-chancellor to supply his place, and to do and perform such things as any chancellor, heretofore in preceding parliaments, have been in use of: as also, in absence of the clerk-register and other necessary members of parliament, to appoint such as you shall think fit to fill their places, and exerce their charges during the sitting of the said parliament. And furthermore, we will and ordain you to make public intimation to all our lieges within that our kingdom of all such acts, statutes and ordinances as shall be enacted and concluded in the said parliament, and generally to use all solemnities requisite for giving of them the strength and power of laws, which may bind all our subjects of that kingdom, in the same manner that any preceding act of parliament in our time or any of our predecessors have done. Given under our royal hand and signet.

May it please your Majesty; This is a warrant for the marquis of Montrose, to be your majesty's commissioner in this next parliament, giving him power to appoint a vice chancellor, in case of the chancellor's absence, and other officers, during the sitting of the said parliament, in case they that are now in place do absent themselves. ROBERT SPOTISWOOD.

Sir Robert Spotiswood's Declaration from St. Andrew's, 2d January, 1646.

In presence of the Laird of Bogie and Mr. Robert Barclay, two of the Commissioners for the Process.

Sir Robert Spotiswood, being examined and interrogative when he went into James Graham's army, declares he went in to him at Bothwell upon the first day of September last by past, and went along with the said James Graham and his army all the way, till he came to Philiphaugh, and being in Selkirk the time of the alarm, he followed down to the Haugh after James Graham had drawn down all his men to the Haugh; and when the deponer was come down, he found the armies ready to join, and before he could come through the Haugh to the other side where the baggage stood, James Graham's army was put to flight, and the deponer seeing them flee, resolved to flee also, and was thereafter taken by the laird of Silvertownhill, and some of his accomplices, holding his sword in his hand. Robert Spotiswood, Ja. Weems of Bogie, Robert Barclay.

For clearing the generality of that part of my deposition, bearing that I was taken with my sword in my hand, the manner of it was this: By the time that I came from the town of Selkirk down the Philiphaugh, the fight was begun (wherein I was never engaged) and the flight taken, in the which I was carried along

with the throng, having nothing but a cane in my hand; but being upon a borrowed nag, that was not able to take me off, and being pursued close by some troopers with their drawn swords, seeing no means to get free of them, I then drew my sword to keep them off, if possible I might, until I had obtained quarters of them; which I did, and in that posture was taken.

ROBERT SPOTISWOOD.

Sir Robert Spotiswood's Letter to the Laird of Bogie and Mr. Robert Barclay, from St. Andrew's Castle, 4th January, 1646.

Right Worshipful; Having bethought myself of my deposition last day before you, lest I might be prejudged by the generality thereof, in regard of my answer made to your question, That I was taken with my sword in my hand, I humbly desire that this specification of my said deposition may be admitted at the time of the advising thereof, to wit, That as I have deponed already, I was not engaged in the fight, neither ever drew sword till after the fight begun; in the which I being carried away with the rest, and my nag not being able to take me off, when I saw sundry troopers coming upon me with their drawn swords, then I drew mine, to keep them off, if I could, until I had obtained quarters, in which posture I was taken. This being the truth, I hope to clear my carriage in that place the better: your worships will allow me the favour to let me cik this to my former deposition, *re adhuc integra*, before the concluding of my process. In expectation whereof, I rest your worships' very humble servant,

ROBERT SPOTISWOOD.

Directed thus: "For the Right Worshipful the Laird of Bogie and Mr. Robert Barclay."

Sir Robert Spotiswood's Letter to the Lord Digby.

My Lord; We are now arrived *ad columnas Herculis*, to Tweed-side, dispersed all the king's enemies within this kingdom to several places, some to Ireland, most of them to Berwick, and had no open enemy more to deal with, if you had kept David Lesly there, and not suffered him to come in here, to make head against us of new. It is thought strange here, that at least you have sent no party after him, which we expected: although he should not come at all. You little imagine the difficulties my lord marquis hath here to wrestle with; the overcoming of the enemy is the least of them, he hath more to do with his own seeming friends: Since I came to him (which was but within these ten days, after much toil and hazard) I have seen much of it. He was forced to dismiss his Highlanders for a season, who would needs return home to look to their own affairs. When they were gone, Abeyn took a caprice, and had away with him the greatest strength he had of horse: notwithstanding whereof he resolved to follow his work, and clear this part of the kingdom (that was only resting) of the rebels that had fled to Berwick,

and kept a bustling here. Besides, he was invited hereunto by the earls of Roxburgh and Home, who when he was within a dozen miles of them, have rendered their houses and themselves to David Lesly, and are carried in as prisoners to Berwick. Traquair hath been with him, and promised more nor he hath yet performed. All these were great disheartenings to any other but to him, whom nothing of this kind can amate. With the small forces he has presently with him he is resolved to pursue David Lesly, and not suffer him to grow stronger. If you would perform that which you lately promised, both this kingdom and the north of England might be soon reduced, and considerable assistance sent from hence to his majesty; however, nothing will be wanting of our parts here: these that are together are both loyal and resolute, only a little encouragement from you (as much to let it be seen that they are not neglected, as for any thing else) would crown the work speedily. This is all I have for the present, but that I am your lordship's most faithful servant, Robert Spotiswood. Dated, near to Kelso, September 10, 1645.

These are the evidences whereupon the sentence *condemnator* is founded, in pronouncing of which there was much division in the court; and though many liked not sir Robert's party, yet they loved his person, which made him many friends, even among the covenanters, in so much, that after the sentence was read, some of the nobility spoke in his behalf, and intreated the house to consider the quality and parts of that excellent gentleman, and most just judge, whom they had condemned, and begged earnestly his life might be spared: but an eminent knowledge and esteem, which in other cases might be a motive to save a criminal, was one cause of taking away his life. For these gentlemen who spoke were told, That the authority of the then established government was not secure, while sir Robert Spotiswood was spared. Whereupon these noblemen who presided in the meeting of the estates at Glasgow, and in the parliament at St. Andrews, when they signed the respective sentences, openly declared to the rest of the members, That they did sign as preses, and in obedience to the command of the estates, but not as their particular judgment.

The day before his death, he wrote a letter to the marquis of Montrose, telling, "That he was condemned to die for being faithful to the king, and because he had shewn an inviolable respect to his lordship's pardon. That whatever the estates might pretend, he believed his taking part with his lordship, was the only motive which made them determine his destruction, and he hoped by his death he would contribute more to his majesty's service, than he could have done, had it pleased the sovereign Providence to have prolonged his life. He intreated his lordship to notice one thing he found necessary for the king's service, which was, to continue his gentleness and moderation of con-

duct, and not to imitate the barbarous inhumanity of their enemies, who gave his lordship but too great cause to follow their example. And as a mark that his services were not disagreeable to his lordship, he conjured him to take under his protection his poor orphans, and the afflicted family of his brother sir John Spotiswood of Dairsey."

#### Sir Robert Spotiswood's EXECUTION.

The day of sir Robert Spotiswood's Execution being come, the people were surprized with astonishment, when they see appear upon the scaffold, a person whom in former time they had with love and admiration seen preside in the Supreme Judicature of the nation, with great sufficiency, and much honour. He appeared with the same gravity and majesty which did ever shine in his countenance; and as he was about to speak to the people, a minister of the place, knowing that the last words of this great man would make impression on the minds of all the Spectators, caused the Provost of the town to impose on him silence. But sir Robert foreseeing this treatment, had put in writing what he had proposed to speak to the people; so that finding himself interrupted, he threw among the multitude the following Paper:

"Ye will expect something from me of the cause for which I am brought hither at this time to suffer in this kind; which I am bound to do for clearing the integrity of my own proceedings, vindicating his majesty's just and pious intentions, and withal to vindicate you that are misled in ignorance, and made to believe that you are tied in conscience to set forward this unnatural Rebellion, masked under the covert and pretext of propagating Religion, and maintaining of the Public Liberties. You have perceived by the fact that is gone before, viz. carrying arms, &c. that I stand here adjudged to die by this pretended Parliament, as a traitor to the estates, and an enemy to my native country. This is a treason unheard of before in this kingdom, against the Estates, a thing of a late creation, which I believe there be some would have erected in opposition to the just and lawful authority of the king, under which we and our predecessors have been so many hundreds of years governed. To come to my treasonable demeanor (as they esteem it), the main one is, That I did docquet and bring down a Commission of Lieutenantry from his majesty, to the lord marquiss of Montrose, with a Proclamation for indicting a parliament by the king's authority, wherein the said lord marquiss was to be commissioner. Not to excuse myself upon the necessity laid upon me to obey his majesty's command in a business of that nature, in regard of the charge I had about him, I cannot so far betray my own conscience, as to keep up from you my judgment of the thing itself, seeing it may tend to the justifying of the king's part, and your better information; for Jack whereof, I know many are entangled in this Rebellion unwittingly: And who knoweth, but God in his merciful providence hath

brought us hither, to be instruments of freeing you from the manifold delusions that are made use of to ensnare you. I say then, it was just and necessary to his majesty to grant such Commissions, and by consequence an act of duty in me to perform what he pleased to command me. It is known well enough what contentment his majesty gave to this kingdom at his last being here, both in the affairs of Church and Policy; notwithstanding whereof the world seeth what meeting he hath gotten from us. When the Rebellion burst forth in England, all that he desired of us, was only to stand neutral, and not to meddle between him and his subjects there: Of which moderate desire of his little reckoning was made; but on the contrary, at the request of these rebels, by the power of their faction amongst us, an Army was raised and sent to England, to assist them against our own native king. His majesty being reduced to this extremity, what expedient could he find so fair and easy, as to make use of the help of such of loyal subjects here, as he knew had such an unparalleled disloyalty in horror and detestation? Amongst whom that matchless mirror of all true worth and nobility, the lord marquiss of Montrose having offered himself, it pleased his majesty to give him a subaltern commission at first: which he having execute with such unheard of success, that his memory shall be had in honour for it in all ages; his majesty for the better furthering of his own service, and to countenance and encourage him the more in it, gave him an absolute and independent one thereafter, which is that I delivered into his hands by his majesty's command. Herewithal his majesty pitying the misery of this poor kingdom, occasioned by the rebellious stubbornness of a few factious spirits, thought fit to give power to the said lord marquiss to call a Parliament in his majesty's name, to try if by that means a remedy might be found against the present evils, and to have all his subjects of this kingdom reduced by one means or other under his obedience. In all this I see not what can be justly charged upon his majesty, or upon me as his servant, who have done nothing against any authorized law of the kingdom, but have served him faithfully, unto whom by trust and natural allegiance I am so much bound.

"Whereas I am declared an enemy to my native country, God be so propitious to me, as my thoughts towards it have been always public, and tending to the good and honour thereof! I do profess, since the first time I had the honour of that noble marquiss's acquaintance, I have been a favourer of his designs, knowing them to be both loyal and honourable: Beside that I knew his affection towards his country to be eminent in this especially, that he did ever show himself passionate to vindicate the honour of this kingdom, which suffereth every where, by this strange combination of theirs with the Rebels of another kingdom against their own prince; wherein I concurred in judgment with him, and thought there was no other way to da

it, but by setting up a party of true and loyal-hearted Scots men for his majesty, whereby it might be seen that it is not a national defection, but only stirred up by a Faction therein, who for their own ends have dishonoured their native kingdom, and disturbed the peace thereof. In enterprizing and prosecuting of which heroical design, God hath so favoured that noble lord, that he hath righted our country in the opinion of all the world, and discovered where the rottenness lieth.

“ Thus far I am content to be accounted a Traitor, in their opinion that have condemned me, being fully assured that God, the righteous Judge of all, who knoweth the uprightness and integrity of my intentions, will impute no fault to me in this kind; since to my knowledge I have carried myself according to the direction of his Word, and the practice of all good Christians before these miserable times we are fallen into. My Exhortation therefore (which coming from one at the point I am at, will, I hope, have some weight) shall be this unto you; That you will break off your sins by repentance, and above all, free yourself of this master sin of Rebellion that reigneth in this land: whereunto most part are either forced, or drawn unawares, chiefly at the instigation of those who should direct you in the way of truth. It cannot be but a great judgment upon a land, when God's singular mercies towards it are so little valued. He hath not given us a king in his wrath, but one for piety, bounty, and all virtues both Christian and moral, may be a pattern to all princes besides. How thankful we are to God for so great a blessing, our respect towards him manifesteth. Yet I fear there is a greater judgment than this upon it, which occasioneth all the mischiefs that afflict this poor land, such as was sent upon Ahab: God hath put a lying spirit in the mouths of the most part of your Prophets, who instead of the doctrine of Salva-

tion, labour to draw your hearts unto the condemnation of Core. God Almighty look upon this poor miserable Church and kingdom, and relieve you out of the intolerable servitude you lie under, which I do heartily wish for in your behalf! So let me have the assistance of your prayers, that God would be pleased to pardon all my sins in Jesus Christ, and gather my soul with the saints and martyrs that are gone to their rest before. So I bid the world and you farewell.”

Sir Robert was not disturbed at the unmannerly interruption he met with, when he was about to address himself to the people; so that turning from them, he wholly bestowed himself in devotions and prayers to Almighty God. The same Minister having asked, if he would have him and the people to pray for the salvation of his soul, he made answer, That he desired the prayers of the people, but was not solicitous for his prayers, which he believed were abominable unto God: for, added he, of all the Plagues with which the offended majesty of God had scourged this nation, this was much the greatest (greater than the Sword, Fire, or Pestilence), that for the sins of the people, God had sent “ a lying spirit into the mouths of the Prophets.” With which saying this preacher finding himself touched, grew so extremely in passion, that he could not forbear scandalous and contumelious language against sir Robert's father, who had been long dead, and against himself, who was now a dying: which this mild gentleman took no notice of, having his mind fixed upon higher matters. At last with an undaunted air he advances towards the instrument of his Execution, and shewing no alteration either in voice or countenance, he laid down his neck to the fatal stroke, and uttered these his last words: “ Merciful Jesu, gather my soul unto thy saints and martyrs, who have run before me in this race.”

176. The several Informations, Examinations, and Confessions of the WITCHES,\* arraigned and condemned at the Sessions holden at Chelmsford, in the County of Essex, before the Right Hon. Robert, Earl of Warwick, and several of his Majesty's Justices of the Peace, the 29th of July: 21 CHARLES I. A. D. 1645.†

THE PREFACE.

Ingenuous reader; Thou hast here presented to thee a sad emblem of the strange sleights and cunning subtilties, whereby Satan

labours to ensnare souls, and at last to bring them to utter ruine; who being that grand impostor, soone began this worke, even in the morning of the creation, in the body of a serpent

\* From a Pamphlet entitled, ‘ A true and exact Relation of the several Informations, Examinations, and Confessions, of the late Witches, arraigned and executed in the county of Essex; who were arraigned and condemned at the late sessions, holden at Chelmsford, before the right hon. Robert Earl of Warwick, and several of his majesty's justices of the peace, the 29th of July, A. D. 1645. Wherein the several murders, and devilish witchcrafts,

committed on the bodies of men, women, and children, and divers cattle, are fully discovered. Published by authority. London, printed by M. S. for Henry Overton and Benj. Allen, and are to be sold at their shops in Pope's-head-alley. 1645.’

† See the Case of Mary Smith, A. D. 1616, *ante*, vol. 2, p. 1050, and the notes to that case: and the Trials of Amy Duny and Rose Cullender, A. D. 1664; of Lloyd, Trembles, and Ed-

miraculously, to reason, dispute, speake, and conferre with Evil; and never ceased till he had laid the honour of those glorious creatures in the dust: and therefore is called that old serpent, that deceiveth all the world, by whose deceitful promises and subtil devices, for his own end, and desire of their destruction, hath ensnared and drawne these poore silly creatures, into these horrid and detestable practices, of renouncing God and Christ, and entering into

a solemn league and contract with the Devil; the thought whereof is sufficient to cause a man to be filled with horror and astonishment. The lawe and expresse command of God doth allow of no familiarity or inquiry of any other spirit, but from himselfe; as Isa. 8. 19. 'And when they shall say unto you, seek ye unto them that have familiar spirits, and unto wizards, that preep and that mutter, should not a people seeke unto their God,' &c. Under this inter-

wards, A. D. 1682; and of Jane Wenham, A. D. 1712. *post.* Witches seem to have abounded in Great Britain more than usually about the middle of the 17th century. The passages of Howell referred to in the Note to Mary Smith's case may amuse, though they should leave the extent of the writer's faith in witches doubtful:

'To the Hon. Sir Edward Spencer, kt. at his House near Brentford.

'I return you the Manuscript you lent me of Dæmonology, but the author thereof and I are two in point of opinion that way; for he seems to be on the negative part, and truly he writes as much as can be produced for his purpose. But there are some men that are of a mere negative genius, like *Johannes ad oppositum*, who will deny, or at least cross and puzzle any thing, though never so clear in it-self, with their but, yet, if, &c. they will flap the lye in Truth's teeth, though she visibly stand before their face without any vizard: such perverse cross-grained spirits are not to be dealt withal by arguments, but palpable proofs; as if one should deny that the fire burns, or that he hath a nose on his face; there is no way to deal with him, but to pull him by the tip of the one, and put his finger into the other. I will not say that this gentleman is so perverse; but to deny there are any witches, to deny that there are not ill spirits which seduce, tamper and converse in divers shapes with human creatures, and impel them to actions of malice; I say, that he who denies there are such busy spirits, and such poor passive creatures upon whom they work, which commonly are called witches; I say again, that he who denies there are such spirits, shews that he himself hath a spirit of contradiction in him, opposing the current and consentient opinion of all antiquity. We read that both Jews and Romans, with all other nations of Christendom, and our ancestors here in England, enacted laws against witches; sure they were not so silly as to waste their brains in making laws against Chimeras, against *non-entia*, or such as Plato's *Kterismutæ* were. The judicial law is apparent in the holy Codex, Thou shalt not suffer a witch to live: the Roman law, which the Decemviri made, is yet extant in the twelve tables, 'Qui fruges incantassent, pœnis dento.' they who shall incant the fruit of the earth, let them be punished. The Imperial law is known by every Civilian; 'Hi cum hostes naturæ sint, supplicio afficiantur.' these,

'meaning witches, because they are enemies to nature, let them be punished. And the acts of parliament in England are against those that invoke ill spirits, that take up any dead man, woman or child, to rake the skin or bone of any dead body, to employ it to sorcery or charm, whereby any one is lamed or made to pine away, &c. such shall be guilty of flat felony, and not capable of clergy or sanctuary, &c.—What a multitude of examples are there in good authentic authors of divers kinds of fascinations, incantations, pre-stigations, of philtres, spells, charms, sorceries, characters, and such like; as also of magic, necromancy, and divinations? Surely the witch of Endor is no fable; the burning of Joan d'Arc the maid of Orleans in Rouen, and of the marchioness of d'Ancre of late years in Paris, are no fables: the execution of Nostredamus for a kind of witch, some fourscore years since, is but a modern story, who among other things foretold 'Le senat de Londres tuera son roy,' the senate of London shall kill their king. [N. B. This letter bears date Feb. 20, 1647-8.] The best historians have it upon record, how Charlemain's mistress enchanted him with a ring, which as long as she had about her, he would not suffer her dead carcase to be carried out of his chamber to be buried; and a bishop taking it out of her mouth, the emperor grew to be as much bewitched with the bishop; but he being cloyed with his excess of favour, threw it into a pond, where the emperor's chiefest pleasure, was to walk till his dying day. The story tells us, how the Waldenses in France were by solemn arrest of parliament accused and condemned of witchcraft. The Maltese took St. Paul for a witch. St. Augustin speaks of women who could turn men to horses, and make them carry their burdens: *Dæmone* writes of an enchanted staff, which the Devil, summoner-like, was used to deliver some market-women to ride upon. In some of the Northern countries, it is as ordinary to buy and sell winds, as it is to do wines in other parts; and hereof I could instance in some examples of my own knowledge. Every one knows what Olaus Magnus writes of Erich's (king of Sweethland's) cornered cap, who could make the wind shift to any point of the compass, according as he turned it about. —Touching diviners of things to come, which is held a species of witchcraft, we may read they were frequent among the Romans; yea, they had colleges for their augurs and aru-

rogative is understood this affirmative, a people should inquire of no other spirit, but of their God only. By which also it is evident, that all spirits that doe suffer themselves to be inquired at, are evil spirits, and therefore devills. And though these devillish practices were frequent and common amongst heathens and infidells, who usually held familiarity with these spirits, and many inquired of them in their oracles; and therefore called those spirits

' pices, who used to make their predictions  
' sometimes by fire, sometimes by flying of  
' fowls, sometimes by inspection into the en-  
' trails of beasts, or invoking the dead, but  
' most frequently by consulting with the oracles,  
' to whom all nations hath recourse except  
' the Jews. But you will say, that since Christianity  
' displayed her banner, the Cross hath  
' scared away the Devil, and struck the oracles  
' dumb: as Plutarch reports a notable passage  
' of Thamus an Italian pilot; who a little after  
' the birth of Christ, sailing along the coasts of  
' Calabria in a still silent night, all his pas-  
' sengers being asleep, an airy cold voice came  
' to his ears, saying, Thamus, Thamus, Thamus,  
' The great God Pan is dead, who was the  
' chiefest oracle of that country. Yet though  
' the light of the gospel chased away those great  
' owls, there be some bats and little night-birds,  
' that fly still abroad, I mean petty spirits, that  
' by secret pactions, which are made always  
' without witness, enable men and women to  
' do evil. In such compacts beyond the seas,  
' the party must first renounce Christ, and the  
' extended woman, meaning the blessed Virgin;  
' he must contemn the Sacrament, tread on the  
' cross, spit at the Host, &c. There is a famous  
' story of such a paction, which Fryar Louis  
' made some half a hundred years ago with the  
' Devil in Marseilles, who appeared to him in  
' shape of a goat, and promised him the enjoy-  
' ment of any woman whom he fancied, with  
' other pleasures, for 41 years; but the Devil  
' being too cunning for him, put the figure of  
' 1 before, and made it 14 years in the con-  
' tract, (which is to be seen to this day, with  
' the devil's claw to it) at which time the Fryar  
' was detected for witchcraft, and burnt; and  
' all those children whom he had christened  
' during that term of 14 years, were re-bap-  
' tised: the gentlewomen whom he had abused,  
' put themselves into a nunnery by themselves.  
' Hereunto may be added the great rich widow  
' that was burned in Lyons, because it was  
' proved the Devil had lain with her; as also  
' the history of lieutenant Jaquette, which  
' stands upon record with the former: but if I  
' should insert them here at large, it would  
' make this letter swell too much.—But we  
' need not cross the sea for examples of this  
' kind; we have too too many (God wot) at home.  
' King James a great while was loth to believe  
' there were witches; but that which happened  
' to my lord Francis of Rutland's children con-  
' vinced him, who were bewitched by an old  
' woman that was servant at Belvoir-Castle;

that gave answer by them, Dæmons, of their skill and knowledge in foretelling things to come: yet now when the light of the gospel shineth so gloriously, that such a generation of poore deluded soules, and to such a number as hath of late been discovered should be found amongst us, is much more matter of admiration and astonishment. I doubt not but these things may seeme as incredible unto some, as they are matter of admiration unto

' but being displeased, she contracted with the  
' Devil (who conversed with her in form of a  
' cat, whom she called Rutterkin) to make away  
' those children, out of mere malignity and thirst  
' of revenge.—But since the beginning of these  
' unnatural wars, there may be a cloud of wit-  
' nesses produced for the proof of this black  
' tenet: for within the compass of two years,  
' near upon 300 witches were arraigned, and  
' the major part executed in Essex and Suffolk  
' only. Scotland swarms with them now more  
' than ever, and persons of good quality exe-  
' cuted daily.—Thus, Sir, have I huddled toge-  
' ther a few arguments touching this subject;  
' because in my last communication with you,  
' methought I found you somewhat unsatisfied,  
' and staggering in your opinion touching the  
' affirmative part of this thesis, the discussing  
' whereof is far fitter for an elaborate large  
' treatise than a loose letter.'

' Here are started up some great knowing  
' men lately, that can shew the very track by  
' which our Saviour went to hell; they will tell  
' you precisely whose names are written in the  
' book of life, whose not. God deliver us from  
' spiritual pride, which of all sorts is the most  
' dangerous. Here are also notable star-gazers,  
' who obtrude on the world such confident bold  
' predictions, and are so familiar with heavenly  
' bodies, that Ptolemy and Tycho Brahe were  
' ninnies to them. We have likewise multi-  
' tudes of witches among us, for in Essex and  
' Suffolk there were above 200 indicted within  
' these two years, and above the one half of them  
' executed: more, I may well say, than ever  
' this island bred since the creation, I speak it  
' with horror. God guard us from the Devil,  
' for I think he was never so busy upon any  
' part of the earth that was enlightened with  
' the beams of Christianity; nor do I wonder  
' at it, for there is never a cross left to fright  
' him away.'

A great collection of such Legends as those mentioned by Howell may be found in "Burton's Anatomy of Melancholy," part 1, § 2, memb. 1, subsect. 2, 3.

Whitelocke, in his Memorials, bears frequent testimony of the state of Witchcraft, about this time: thus, July 25th, 1645, "twenty witches in Norfolk were executed." December 13, 1649, "many witches apprehended of late about Newcastle: the Witch-tryer thrusting a pin into the skin in many parts of their bodies, they were insensible of it, which is one circumstance of proof against them." Same year, July 2d, "five witches were burned at Edin-

others. *Nolle nimis sapere*, saith the poet, it is true wisdom not to be too wise; that is, not to know nor desire to know more than is allowed or needfull; needfull not in our desires, but in Gods decree: Here then let reasonable men be persuaded not too much, as is usual to swell with indignation, or to be puffed with impudence, where God doth not appertly reveale and plainly, as they desire and thinke needfull the subtil en-

burgh, who had the marks upon them which they had from the Devil." April 15th, 1650, "at a little village within two miles of Berwick, two men and three women were burned for witches, and nine more were to be burned, the village consisting but of fourteen families, and there were as many witches." Same year, July 24, "one man and two women, about Boston, committed for witches: the man confessed he had a Familiar sucked him at some paps, which he then shewed. He had signed a writing to the Devil, to deny God and Jesus Christ, and the Familiar drew blood from those paps and appeared to him in the shape of a white chicken: that he signed the Devil's covenant with a piece of a stick, with the same mark he now made at the bottom of his examination; and both the women confessed the like." Under date October 4, 1652, he tells us, that "sixty men and women were accused before the commissioners for administration of justice in Scotland, at the last circuit, for witches; but they found so much malice and so little proof against them, that none were condemned." But again, Oct. 29th, of the same year, after mentioning, That "the commissioners for administration of justice in Scotland sat at Edinburgh, and had many criminal matters brought before them, sixty in a day, for adultery, incest, &c. (he had on a former occasion made mention of the frequency and malice of such charges, and of the antiquity of the facts alleged) in the court, and proofs against few of them, and the malice of people against one another so great, that they brought accusations for facts done 20 years past, and the greatest proof against them, was a forced confession before the Kirk." He proceeds to tell us, "That some accused for witches, had been tortured to make them confess, by tying their thumbs behind them, and then hanging them up by their thumbs, while two Highlanders whipped them; after which, they set lighted candles to the soles of their feet, and between their toes, then burned them, by putting lighted candles into their mouths, and then burning them in the head: That six of them were accused, of whom four of them died of the torture. The judges resolved to examine the business, and to find out these Scots tormentors; that another woman being accused for a witch, was kept 28 days with only bread and water, and stripped naked and laid upon a cold stone, with only hair-cloth over her; that among the accused, others had hair shirts dipped in vinegar put over them, to fetch off

gines and mysticall craft of the devill in the machinations of witches and sorcerers; but soberly, modestly, and discreetly so far forth be contented to pursue the triall and just way of their discoverie, as with sense, with reason, with religion, is just and righteous; knowing, that whatsoever is beyond the lists, is reasonlesse, senselesse and impious. The greatest doubt and question will be, whether it be in the power of the devil to perform

the skin." Again, under date Nov. 28, 1653, he tells "of divers witches examined and sent to prison, some of them called Black Witches, who killed men, women, and children, and cattle, by their witchcrafts; and others of them called White Witches, who healed them that were bewitched by the other, and that this was confessed by them." See also under dates July 3rd, Sept. 3rd, and Oct. 4th, 1649; Jan. 22nd, and Feb. 15th, 1649-50. While witchcraft thus flourished, it will not excite wonder that Astrology was respected. The predictions of Lilly (the Sidrophel of Hudibras) are respectfully mentioned by both Rushworth and Whitelocke, see 7 Rushw. Coll. 1263, 1264. Whitelocke's Mem. 144, 329, 332. Lilly, who as an Astrologer, appears to have been consulted by Charles the First, published in 1651, a Collection of predictions, under the title of "Monarchy or No Monarchy in England," to prove that there would never be another king in England. Some nonsense of king James's about *witching* and *unwitching* is to be found in the Case between Lord and Lady Essex, A.D. 1613, ante, vol. 2, p. 800, 801, 814. See, too, the Case of Anne Turner, for Overbury's murder, vol. 2, p. 929. Arnot in his "Collection and Abridgement of celebrated Criminal Trials in Scotland," distinctly mentions upwards of 30 prosecutions for witchcraft, in most of which capital punishment appears to have been inflicted, besides alluding to many others.

At Huntingdon, Spring assizes, 1593, before Mr. Justice Fenner, the three Witches of Warboise (John Samuel, Alice his wife, and Agnes their daughter) were arraigned and convicted (they were afterwards executed) for bewitching five daughters of Robert Throckmorton, esq., and divers other persons with sundry devilish and grievous torments, and also bewitching to death the lady Cromwell. See "Complete History of Magic, Sorcery, and Witchcraft," vol. 1, p. 49 et seq. On March 11th, 1619, Margaret and Philip, daughters of Joan Flower (who died marvellously while in custody) having been convicted at the assizes at Lincoln, held before Chief Justice Hobart and Mr. Baron Bromley, of bewitching the earl of Rutland his wife and children, were executed. See their cases in the same work.

In the year 1441, Eleanor Cohham (the wife of Humphry, duke of Gloucester, uncle of Henry the sixth) together with other persons, were convicted of Witchcraft. Hall in his Chronicle, p. 202, ed. 1809, briefly mentions the transaction. Stow in his Annals, p.

such asportation and locall translation of the bodies of witches; it seemeth in reason a thing whereunto the devill is unable: And whether these supernaturall works, which are above the power of man to do, and proper only to spirits; whether they are reall, or only imaginary and fained. In answer to which, it is very probable that the devill hath power to dispose and transport the bodies of men and women, where God himself doth not

countermand or prohibit: as instance, when hee took the body of our Saviour and set it upon a pinnacle of the Temple; and these supernatural acts may appear to the outward sense, as histories, and many other true reports and records of other wonderful works and supernatural feats all alike offered to the outward sense. It is true, that a spirit, and a spirituall work simply in itself, in the own nature and substance cannot be seen by any bodily eye, or

381, is somewhat more circumstantial, as follows:

"Roger Bolinbrooke a great astronomer, with Thomas Southwell a chanon of Saint Stephens Chappell at Westminster, were taken as conspirators of the King's Death, for it was said, that the same Roger should labour to consume the king's person by way of Negromancie, and the said Thomas should say masses in the lodge of Harnesey parke beside London, upon certaine instruments with the which the said Roger should use his craft of Negromancie, against the faith, and was assenting to the said Roger, in all his workes; and the 25th day of July being Sunday, Roger Bolinbrooke, with all his instruments of Negromancie, that is to say, a chayre paynted wherein he was wont to sit, upon the four corners of which chayre stode foure swords, and upon every sword an image of copper hanging, with many other instruments, hee stode on a high scaffold in Paules Churchyard, before the crosse, holding a sword in his right hand and a sceptre in his left, arrayed in a mervellous attire, and after the sermon was ended by maister Low bishop of Rochester, he abjured all articles longing to the crafte of Negromancie or misowning to the faith, in presence of the archbysshop of Canterbury, the cardinall of Winchester, the byshop of London, Salisbury and many other.

"On the Tuesday next following, dame Elianor Cobham, daughter to Reginald Cobham, lord of Stirbrough, dutchesse of Gloucester, fledde by night into the sanctuary at Westminster, which caused her to be suspected of Treason.

"In the meane time, Roger Bolinbrooke was examined before the king's counsaile, where he confessed that he wrought the saide Negromancie at the stirring and procurement of the said dame Elianor, to know what should befall of her, and to what estate she should come, whereupon shee was cited to appear before Henry Chicheley archbishop of Canterbury, Henry Beaufort bisshoppe of Winchester cardinall, John Kempe archbysshop of Yorke cardinall, William Aseoth the byshop of Salisbury, and other, in Saint Stephens Chappell at Westminster, there to answer to certaine Articles in number 28, of negromancie, witchcraft, sorcerie, heresie, and treason, where when shee appeared, the foresaide Roger was brought forth to witnes against her, and said, that shee was cause and first stirred him to labour in the said art. Then on the 11th of

August, shee was committed to the ward of sir John Steward, sir William Wolfe, knights, John Stanley esquior, and other, to be conveyed to the castle of Leeds, there to remaine till three weekes after Michaelmas.

"Shortly after, a Commission was directed to the earles of Huntington, Stafford, Suffolke, and Northumberland, the treasurer sir Ralph Cromwall, John Cornwall lord Fanhope, sir Walter Hungerforde, and to certaine judges of both benches, to enquire of all manner of treasons, sorceries and other things, that might be hurtfull to the king's person; before whome, the said Roger, and Thomas Southwell as principals, and dame Elianor as accessory, were indicted of treason in the Guilde Hall of London.

"There was taken also Margery Gurdemaine, a witch of Eye besides Westminster, whose sorcerie and witchcraft the said Elianor hadde long time used, and by her medicines and drinckes enforced the duke of Gloucester to love her, and after to wedde her, wherefore, and for cause of relapse, the same witch was burnt in Smithfield, on the 27th day of October.

"The 21st of October, in the Chappell before said, before the byshops, of London Robert Gilbert, of Lincolne William Alnewicke, of Norwich Thomas Brouns, the sayde Elianor appeared, and Adam Molins clark of the king's counsell, read certaine Articles objected against her of Sorcerie and Negromancy, whereof some shee denyed, and some shee granted.

"The 23rd of October, dame Elianor appeared againe, and witnesses were brought forth and examined: and she was convict of the saide Articles: then was it asked if she would say any thing against the witnesses, whereunto she answered nay, but submitted herself. The 27th day of October she abjured the Articles, and was adjoynd to appeare againe the 9th of November. In the meane tyme, to wit, on the 26th of October, Thomas Southwell dyed in the Tower of London, as himselfe had prophesied that he should never die by justice of the law.

"The 9th of November dame Elianor appeared before the archbysshop and other, in the said Chappell, and received her penance, which shee performed.

"On Monday the 13th of November, she came from Westminster by water, and landed at the Temple bridge, from whence with a taper of wax of two pound in her hand, she

be deprehended by any outward sense, notwithstanding, as they do mix themselves with bodily substances, are certainly tried and subject to the sense: For illustration hereof, instance may be given in holy Scripture, as the sorcerers of Egypt, where water was turned into blood, the rod into a serpent, &c. By a spirituall power their eyes did manifestly see the water, and as apparently after see the blood, and the rod turned into a serpent, the eye being a true

and undeceived witness of both; things imagined and fancied, are easily discerned from these things that are reall and true objects. But it may be demanded, whether a Spirit or Devill can cause such a transmutation of the bodies of witches into those severall shapes and forms of cats, dogges, birds, and other creature, as is often reported, where witches and sorcerers have lived. The answer is, that it is impossible in nature, and in the ordinary

went through Fleet-street, hoodlesse (save a kercheife) to Pauls, where she offered her taper at the high altar. On the Wednesday next shee landed at the Swan in Thamis-street, and then went through Bridge-streete, Gracechurch-streete, strait to Leaden Hall, and so to Christ-church by Aldegate. On Friday she landed at Queen Hive, and so went through Cheape to Saynt Michaels in Cornhill, in forine aforesaid: at all which times the maior, sherifes, and crafts of London, received her, and accompanied her. This being done, shee was committed to the ward of sir Thomas Stanely, wherein shee remained during her life, in the castle of Chester, having yeerely 100 markes assigned for her finding: in the 22nd of Henry the sixt, shee was removed to Kenilworth, there to be safely kept, whose pride, false covetise, and lechery, were cause of her confusion.

"The 18th of November Roger Bolinbrooke, with sir John Hum, priest, and William Woodham, esquier, were arraigned in the Guildhall of London, where the said John and William hadde their charters, but Roger Bolinbrooke was condemned, and had judgment of sir Jo. Hody, Chiefe Justice of the King's Bench, and the same day he was drawne from the Tower to Tyborne, and there hanged and quartered: and when the said Roger should suffer, he sayd that he was never guilty of any treason against the king's person, but hee had presumed too far in his cunning, wherefore he cryed God mercy: and the Justice that gave on him judgement, lived not long after."

See Shakespear's second part of Henry 6th, acts 1st and 2d. So too Richard duke of Gloucester accused Elizabeth the widow, and Jane Shore the mistress, of his brother king Edward the 4th, of having by sorcery shrunk up his arm. See Shakespear's Richard the 3rd, act 3, sc. 4.; and sir Thomas More, Hall, and Holinshed, as referred to in Mr. Malone's Note on the Passage.

Dr. Nash, in his "History of Worcester-shire," vol. 2, p. 38, says, "That May 14, 1660, four persons accused of Witchcraft were brought from Kidderminster to Worcester gaol, one widow Robinson and her two daughters, and a man. The eldest daughter was accused of saying, that, if they had not been taken, the king should never have come into England, and though he now doth come, yet he shall not live long, but shall die as ill a death as they; and that they should have made corn like pepper. Many great charges against

them and none proved; they were put to the ducking in the river; they would not sink, but swam aloft. The man had five tents, the mother three, and the eldest daughter one. When they went to search the woman, none were visible; one advised to lay them on their backs, and keep open their mouths, and they would appear; and so they presently appeared in sight. [From some MSS. sent me belonging to the Townshends of Elmly.]

"Before this, in the year 1649, four persons were tried at Worcester for this supposed offence, and all executed, two of them confessing their crime, viz. Margaret Landis and Susan Cook: Rebecca West and Rose Holybred died obstinate.

"In the year 1716, Mrs. Hicks and her daughter aged 9 years were hanged at Huntington for witchcraft, for selling their souls to the devil, tormenting and destroying their neighbours, by making them vomit pins, raising a storm, so that a ship was almost lost, by pulling off her stockings and making a lather with soap. They were committed by one justice Wilmot. [London, printed by Mathews, in Long Acre]."

The statute against Witchcraft was not repealed till the 9th George 2, 1736; and even still an unhappy prejudice prevails in many places against unfortunate old women. It is not many years since a poor woman, who happened to be very ugly, was almost drowned in the neighbourhood of Worcester, upon a supposition of witchcraft; and had not Mr. Lygon, a gentleman of singular humanity and influence, interfered in her behalf, she would certainly have been drowned, upon a presumption that a witch could not sink.

Mr. Pennant, in his Tour to Scotland, says, "that the last instance of these frantic executions in the North of Scotland was in the year 1727, as that in the South was at Paisly in 1696, where, among others, a handsome young woman suffered." And says, that the last person who was brought to the stake in Scotland for the crime of witchcraft was condemned by capt. David Ross of Little Dean, sheriff depute of Sutherland, A. D. 1722, *Crim. Trials in Scotland*, 307. He proceeds, "While we reflect upon the blind and barbarous superstition of our ancestors, while we bestow the tribute of applause on those humane and liberal senators who introduced this law, st. 9 G. 2. c. 5, we cannot help lamenting that a sect among us looks upon the abolition of the penal statutes against witchcraft, not only as an evil,

unchangeable course of all things created by God, that one individuall and continued substance or entire thing should be wholly divided from itself, and yet be itself; for there can be no reall or true transmutation of one substance, or nature into another, but either by creation or generation. Now creation is the worke of an infinite power, and therefore of God alone. The Devill then cannot create, neither can he do it by any course of true generation, because

but a sin.—The Seceders published an act of their Associate Presbytery at Edinburgh, A. D. 1743. This act, which is full of the most illiberal and absurd doctrines, the most seditious and intolerant spirit, was reprinted at Glasgow so late as the year 1766. In it there is contained the annual confession of sins, which to this day they read from the pulpit.—Among the sins national and personal there confessed, are the act of queen Anne's parliament for tolerating the episcopal religion in Scotland, the act for adjourning the court of session during the Christmas holydays; 'as also the penal statutes against Witches have been repealed by parliament, contrary to the expresse law of God\*.'—The Seceders comprehend a very large body of the populace in Scotland."

A peculiar hardship upon Scottish witches arose from the indelibility of their character. In the Roman law prescription of crimes was established. See the *Encyclopædia Britannica in voc.* "Prescription;" and the authorities referred to in Arnot's Collection of Criminal Trials in Scotland, p. 232. This doctrine was adopted in many of those countries the municipal institutions of which were to a greater or less extent derived from the Roman law. In Scotland vicennial prescription seems to prevail even in cases of murder; (See the Case of Malcolm M<sup>r</sup> Gregor, alias John Grant, A. D. 1773, Arnot, 229.) But "once a witch, always a witch." In the case of witchcraft no prescription was allowed; Arnot, 233. Mr. Burke in his *Reflections on the Revolution in France*, (Burke's Works, vol. 5, p. 276, edition of 1808) says, "Domat, one of the greatest of the French lawyers, tells us with great truth, that the doctrine of Prescription is a part of the law of nature." I have not been able to find in Domat any passage expressly asserting the proposition which Mr. Burke thus ascribes to him. But in Book 3, Tit. 7, sect. 4, he speaks very strongly of the reasonableness and justice, the advantages and natural necessity of such a doctrine, as to property.

It is, indeed, sufficiently clear that the first evidence of property must be possession; and that this evidence must be very much corroborated by long duration of possession. Whether the doctrine of Prescription be, or not, part of the law of nature, it is certainly agreeable to that law, and to the fundamental principles of justice. The operation of time is to destroy by

a true and real generation hath many precedent alterations, and by little and little, in space of time grows unto the perfection of that kind unto which it doth tend, or is begotten; therefore they are but seeming and juggling transmutations of the Devill: And here that saying of Augustine may be alledged, 'De civit. Dei, lib. 13, cap. 13. (Nec sanè Dæmones naturas creant, sed specie tenus, quæ à Deo creata sunt commutant, ut videantur esse quæ

natural and accidental decay all the proofs which might be afforded by oral testimony or written documents. Men and women die; papers and parchments rot and are devoured. And it is most reasonable and most agreeable to the eternal principles of equity, that the lapse of time should be allowed in contemplation of law to supply those deficiencies of proof of which it is thus the cause. In the law of England there is no prescription of crimes. At Nottingham Summer Assize, A. D. 1709, William Horne was tried for a murder alleged to have been committed in February 1724. He was convicted of this murder, and executed on the eleventh of December following. And much more recently, at the January Sessions in the year 1802, Lieutenant Colonel Joseph Wall was convicted at the Old Bailey (and he was afterwards executed accordingly) of a murder committed in Africa twenty years before. All indictments are preferred and prosecuted in the name of the King, and the maxim of the law is, *Nullum tempus occurrit regi*. But the periods within which certain criminal prosecutions may be commenced have been limited by different statutes: thus by the stat. of Gloucester, 6 Ed. 1, c. 9, all appeals of death must be sued within a year and a day after the completion of the felony by the death of the party (which indeed Blackstone suspects may have been only declaratory of the old common law). By 7 W. 3, c. 3, (extended to Scotland by the tenor of the Act of Union 7 Ann. c. 21, See 6 G. 3, c. 53, and East's Pleas of the Crown, c. 2, s. 45; and altered by st. 40 G. 3, c. 93.) no person shall be tried for High Treason working corruption of blood (except attempts to assassinate the king, and counterfeiting the king's seals or coin) or misprision of such treason, unless the indictment be found by a grand jury within three years after the offence committed. By 31 Eliz. c. 5, no prosecution upon any penal statute giving a forfeiture or penalty can be brought by a common informer later than one year, or on the part of the crown later than three years (or than two if the whole forfeiture be originally given to the crown) after the commission of the offence. And very many penal statutes specifically prescribe short periods within which the offenders against such statutes are to be prosecuted. So by 27 G. 3, c. 44, prosecutions in the ecclesiastical courts (which courts proceed, it seems, upon the maxim that *nullum tempus occurrit ecclesiæ*) for defamation must be commenced within six months, and for incontinence and

\* Act for renewing the Covenants, p. 26. 27, 34.

'non sunt' that is, Devils cannot create any nature or substance, but in juggling shew, or seemingly only, whereby with false shadows covering those things which are created of God to cause them to seem that which they are not indeed. Take one instance of the jugglings and illusions of the Devil above all the rest, which doth most palpably detect him herein, is a history related by Johannes Baptista Porta, in his second book, *de Magia naturali*; hee there witnesseth, that upon the Devil's suggestion, a witch believed firmly and perswaded herself, that all the night shee had rid in the aire, over divers great mountaines, and met in conventicles with other witches, when the same night, the mentioned author himself, with others that watched her and saw her all that imagined time of her transvection in the aire, to be within her chamber profoundly sleeping; yea, had smitten her, made her flesh blew with strokes, and could not awake her, nor perswade her afterward when she was awaked that they had so used her, or at all had scene or beheld her; thus prevalent was the juggling power of the Devil.

Many other like instances of like nature might be added, only what here is published and communicated unto the world, may sufficiently discover those strong delusions which

certain other offences within eight months after the offence committed. For particulars respecting the operations of time upon civil rights according to the law of England, which operations for the most part depend upon certain statutes of limitation, as they are called; see Blackst. Comm. Introd. sect. 3, book 1, c. 7, s. 2, book 2, c. 3, s. 2, c. 17, c. 18, s. 3, c. 21, s. 3, book 3, c. 10, c. 11, s. 2, c. 16, s. 4, c. 20. The law of England admits prescriptive titles to all sorts of property except adowsons, and (since the stat. 9 G. 3, c. 16.) against the king as well as all other persons, excepting ecclesiastics, and persons claiming under them in right of the church: in which exception to the operation of this law of nature, as Mr. Burke calls it, there seems to be no small hardship.

The following Account of the Expence of burning a Witch, A. D. 1649, is extracted from Arnot's Collection of Criminal Trials in Scotland, Appendix, No. vi.

"I am indebted," says Mr. Arnot, "for this curious paper to the polite and obliging communication of Mr. William Henderson, of the Glass-house, Glasgow, a descendant of Mr. Logan, of Burncastle, on whose lands the unhappy sufferer lived. The account is a voucher of a payment made by Alexander Louddon, factor on the estate of Burncastle, the proprietor being then a minor and an infant. It is entered in the factor's books thus:

'Mair for Margarit Dunhome the time sche was in prison, and was put to death, 065 14 4  
'Count gifn out be Alexander Louddon in Lylstoun, in ye yeir of God 1649 yeiris, for Margrit Dollmoune in Burncastell.

these poor soules were given up unto, who now according to their demerits, and according to the lawes of God and this kingdome established, have received their just reward. H. F.

The Information of John Rivet, of Mannintree, Taylor, taken before Sir Harbottell Grimston, Knight and Baronet, one of the Members of the Honourable House of Commons; and Sir Thomas Bowes, Knight, another of his Majesties Justices of Peace for this County, the 21th of March, 1645.

This informant saith, That about Christmas last, his wife was taken sicke and lame, with such violent fits, that this informant verily conceived her sicknesse was something more than merely naturall: whereupon this informant, about a fortnight since, went to a cunning woman, the wife of one Hovye, at Hadleigh in Suffolke, who told this informant, that his wife was cursed by two women who were neer neighbours to this informant, the one dwelling a litle above his house, and the other beneath his house, this informant's house standing on the side of an hill: whereupon he beleevied his said wife was bewitched by one Elizabeth Clarke, alias Bedingfield, that dwelt above this informant's house, for that the said Elizabeth's

'Item, in ye first, to Wm. Currie and Andrew Gray for the watching of hir ye space of 30 days, inde ilk day, xxx sh. inde . . . xlv lib Scots  
'Item mair to Jon Kinked for brodding of her . . . vi lib Scots  
'Mair for meat and drink and wyne to him and his man . . . iiij lib Scots  
'Mair for cloth to hir . . . iiij lib Scots  
'Mair for twa tare treis . . . xl sh Scots  
'Item mair for twa treis, and ye making of them, to ye workmen . . . iiij lib Scots  
'Item to ye hangman in Hadingtoun, and fetchin of him, thrie dolloures for his pens, is . . . iiij lib xiiii sh  
'Item mair for meat and drink and wyne for his intertinge . . . iii lib Scots  
'Item mair fer ane man and twa horss, for ye fetcheing of him, and taking of him hame agane . . . xl sh Scots  
'Mair to hir for meat and drink ilk ane day, iiij sh the space of xxx dayes, is . . . vi lib Scots  
'Item mair to ye twa officers for yr fie ilk day sex shilline aught pennes, is . . . x lib Scots  
'Summa is iiij scoir 12 lib xiiij sh  
'GUILBERT LAUDER.  
'WM. LAUDER BILZUARS.

'Takin of this above written soume twentie-scaven pundis Scotis qik the said umql Margrit Dinham had of her ain.

'92 14 —  
27 — —  
65 — —

mother and some other of her kinsfolke did suffer death for witchcraft and murder.

The Information of Matthew Hopkins, of Mannintree, Gent. taken upon oath before us, the 25th day of March, 1645.

This informant saith, That the said Elizabeth Clarke (suspected for a witch as aforesaid) being by the appointment of the said justices watched certaine nights, for the better discovery of her wicked practises, this informant came into the roome where the said Elizabeth was watched, as aforesaid, the last night, being the 24th of this instant March, but intended not to have stayed long there. But the said Elizabeth forthwith told this informant and one Master Sterne there present, if they would stay and do the said Elizabeth no hurt, shee would call one of her white imps, and play with it in her lap; but this informant told her, they would not allow of it: and that staying there a while longer, the said Elizabeth confessed she had had carnall copulation with the Devill six or seven years; and that he would appear to her three or four times in a weeke at her bed side, and goe to bed to her, and lye with her halfe a night together in the shape of a proper gentleman, with a laced hand, having the whole proportion of a man, and would say to her, 'Besse, I must lye with you;' and she did never deny him: and within a quarter of an houre after there appeared an impe like to a dog, which was white, with some sandy spots, and seemed to be very fat and plump, with very short legges, who forthwith vanished away: and the said Elizabeth said the name of that impe was Jarmara: and immediately there appeared another impe, which shee called Vinegar Tom, in the shape of a greyhound with long legges: and the said Elizabeth then said that the next impe should be a black impe, and should come for the said Master Sterne, which appeared, but presently vanished: and the last that appeared was in the shape of a polcat, but the head somewhat bigger. And the said Elizabeth then told this informant that shee had five impes of her owne, and two of the impes of the old beldam Weste (meaning one Anne Weste, widow) who is now also suspected to be guilty of witchcraft; and said, sometimes the impes of the old beldam sucked on the said Elizabeth, and sometimes her impes sucked on the old beldam Weste. And the said Elizabeth further told this informant, that Satan would never let her rest, or be quiet, untill shee did consent to the killing of the hogges of one Mr. Edwards of Mannintree aforesaid, and the horse of one Robert Tavler of the same towne. And this informant further saith, That going from the house of the said Mr. Edwards to his own house, about nine or ten of the clock that night, with his greyhound with him, he saw the greyhound suddenly give a jumpe, and ran as shee had been in a full course after an hare; and that when this informant made haste to see what his greyhound so eagerly pursued, he espied a white thing about the bignesse of a kit-

lyn, and the greyhound standing aloofe from it; and that by and by the said white impe or kitlyn daunced about the said greyhound, and by all likelihood bit off a piece of the flesh of the shoulder of the said greyhound; for the greyhound came shrieking and crying to this informant, with a piece of flesh torne from her shoulder. And this informant further saith, That coming into his own yard that night, he espied a black thing, proportioned like a cat, onely it was thrice as big, sitting on a saw-berry bed, and fixing the eyes on this informant; and when he went towards it, it leaped over the pale towards this informant, as he thought, but ran quite through the yard, with his greyhound after it, to a great gate, which was under-set with a paire of tumbrell strings, and did throw the said gate wide open, and then vanished; and the said greyhound returned againe to this informant, shaking and trembling exceedingly.

The Information of John Sterne, Gent. taken upon oath before us, the 25th day of March 1645.

This informant saith, That watching with Elizabeth Clarke, (suspected of witchcraft, as aforesaid) shee confessed that the Devill had had carnall copulation with her in the likeness of a man; and that the said Elizabeth desired this informant, and the rest that were in the roome with her, to sit downe, and said, shee would shew this informant and the rest some of her impes: and within halfe an houre there appeared a white thing in the likeness of a cat, but not altogether so big: and being asked, if she would not be afraid of her impes, the said Elizabeth answered, 'What, do yee think I am afraid of my children?' And that shee called the name of that white impe, Hoult. And this informant further saith, That presently after there appeared another white impe, with red spots, as big as a small dog, which shee then called Jarmara: and that immediately after, there appeared at the threshold of the doore another impe about the bignesse of the first, but did presently vanish away. And then the said Elizabeth being asked, if any more impes would come? she answered, 'That Vinegar Tom would come by and by.' And forthwith there appeared another in the likeness of a dumb dogge, somewhat bigger than any of the former. And the said Elizabeth also told this informant, that shee had three impes from her mother, which were of a browne colour, and two from the old beldam Weste: and that there had five impes appeared; but shee had one more, called Sack and Sugar, which had been hard at worke, and it would be long before it came, but it should teare this informant. And a while after, the said Elizabeth said, That it was well for this informant he was so quick, otherwise the said impe had soone skipped upon his face, and perchance had got into his throate, and then there would have been a feast of toades in this informant's belly. And the said Elizabeth further confessed to this in-

formant, that shee had one impe for which shee would fight up to the knees in blood, before shee would lose it; and that her impes did commonly suck on the old beldam Weste, and that the said old beldam's impes did suck on her the said Elizabeth likewise.

The Information of Frances Milles, Grace Norman, Mary Phillips, and Mary Parsley, taken upon oath before the said Justices, the 25th of March, A. D. 1645.

These informants say jointly, That watching with the said Elizabeth Clarke, suspected as aforesaid, about twelve of the clock last night, the said Elizabeth smacked with her mouth, and beckned with her hand, and instantly there appeared a white thing about the bignesse of a cat; and that these informants saw five impes more, which the said Elizabeth named as aforesaid; and that the said Elizabeth told these informants, that the old beldam (meaning the said Anne Weste) did by witchcraft kill the wife of one Robert Oakes, of Lawford in the county aforesaid, and was the death of a clothier's childe of Dedham in the said county of Essex; both which dyed, as these informants very well know, about a weeke since. And the said Elizabeth told these informants, that the said old beldam Weste had the wife of one William Cole, of Mannintree aforesaid, in handling, who dyed not long since of a pining and languishing disease.

The Information of George Turner, taken upon oath, the 25th day of March, 1645, before the said Justices.

This informant saith, That going to the said Elizabeth Clarke alias Bedingfield, after shee was apprehended, and asking her whether shee had any hand in the drowning of one Thomas Turner, this informant's brother, who was cast away at sea about thirty moneths since; the said Elizabeth answered, That the old beldam Weste raised that winde that sunke his boy: And that she the said Elizabeth had no hand in that businesse.

The Information of John Bankes of Mannintree, taken upon oath before the said Justices the 25th of March, 1645.

This informant saith, That watching with the said Elizabeth, he doth informe and confirme all the particulars expressed and set downe in the information of the said Mr. Sterne.

The Information of Edward Parsley of Mannintree, taken upon oath before the said Justices the 25th of March, 1645.

This informant saith, That watching with the said Elizabeth Clarke, alias Bedingfield, the last night, he asked the said Elizabeth if he should continue still in the room with her; And the said Elizabeth desired he should, if he would fight for her with the Devills, for they would come this night, and that which shee called Hoult would come first, and then that which shee called Jannara; which did appeare in the likeness of a white dogge, with red spots; and presently after there appeared that impe which shee

called Vinegar Tom; and then that which shee called Sack and Sugar: And the said Elizabeth then told this informant, that the Devill had had possession of her six or seven years. And that he had oftentimes knocked at her dore in the night time; and that shee did arise, open the dore and let him in; and that he went to bed to her three or foure times in a weeke, and had the carnall knowledge of her as a man.

The Examination of the said Elizabeth Clarke, alias Bedingfield, taken before the said Justices the 25th of March, 1645.

This examinant saith, That about six moneths since shee met with the said Anne Weste, widow, (who is now likewise apprehended) in a field neere the house of the said Elizabeth, where the said Elizabeth was picking up a few sticks; The said Anne Weste seemed much to pittie this examinant for her lameness (having but one leg) and her poverty; And said to this examinant, That there was wayes and meanes for her to live much better then now shee did: And said, that shee would send to this examinant a thing like a little kitlyn, which would fetch home some victualls for this examinant; and that it should doe her no hurt. And this examinant saith, that within two or three nights after there came a white thing to her in the night, and the night after a gray one, which spake to this examinant, and told her they would doe her no hurt, but would helpe her to an husband, who should maintaine her ever after: And that these two things came into this examinant's bed every night, or every other night, and sucked upon the lower parts of her body.

The Information of Robert Tayler of Mannintree, taken upon oath before the said Justices the 23rd of Aprill, 1645.

This informant saith, That about nine weekes since, Elizabeth, the wife of Edward Gooding (who is accused by the said Elizabeth Clarke to be a confederate with her) came to the shop of this informant, and desired to be trusted for half a pound of cheese, which being denyed, shee went away, muttering and mumbling to her self, and within a few dayes came again with money, and bought a pound of cheese of this informant, and the same night this informant having an horse standing in his stable, the said horse was taken in a strange manner sick and lame; whereupon this informant sent for four farriers to have their best advice, who could not discover the cause of the disease; but the said horse about foure dayes after died: And this informant also saith, that it was observed by himself, and divers others who often went to see the said horse, that still upon their coming into the stable, he lay quiet, and looked cheerfully, but as soon as the doore was shut, and the horse alone, hee did violently beat himself, and that the belly of the said horse would rumble and make a noyse, as a foule chimney set on fire: And this informant further saith, that hee is

induced to believe, that the said Elizabeth Gooding was the cause of the death of his said horse; for that this informant hath heard, that Elizabeth Clarke and Anne Leech widow, (who stand both accused for Witchcraft, and have confessed themselves guilty) have impeached the said Elizabeth Gooding for killing of this said horse, and that the said Elizabeth Gooding is a lewd woman, and to this informant's knowledge, hath kept company with the said Elizabeth Clarke, Anne Leech, and Anne West, which Anne West hath been suspected for a witch many yeeres since, and suffered imprisonment for the same.

The Examination of Elizabeth Gooding, taken before the said Justices the 11th of April, 1645.

This examinant saith, That shee is not guilty of any one particular charged upon her in the information of the said Robert Tailer.

The Information of Richard Edwards of Mannintree aforesaid, taken before the said Justices the 23rd day of April, 1645.

This informant saith, That about twelve moneths since, upon a Sabbath day, after the afternoon sermon, driving his coves home by the house of Anne Leech of Misley widow, about forty yards from her said house, a black cove of this informant's, (being very well to his thinking) fell down, and within two dayes after died. And the very next day driving his coves from the same pasture, this informant had a white cove that fell down within a rod of the same place where the other cove fell, (being also, as this informant conceived, sound and well) and within a week after dyed; and hee further saith, that hee caused both the said coves to be opened, and that there could be no disease discovered, which might occasion their death: And this informant likewise saith, that about August last hee had a childe nursed by one goodwife Wyles, dwelling neer the houses of the said Elizabeth Clark and Elizabeth Gooding, and that his said childe was taken sick, and had very strange fits, extending the limbs, and rowling the eyes, and within two dayes after dyed: And this informant doth verily believe, that Anne Leech and the said Elizabeth Gooding were the death of his said child, as is confessed by the said Anne Leech in her own Confession and Examination.

The Examination of Anne Leech of Misley in the county aforesaid, widow, taken before the said Justices, April 14, 1645.

This examinant saith, That she had a gray imp sent to her, and that this examinant, together with the said Elizabeth Clark, and Elizabeth the wife of Edward Gooding, did about a year since, send their imps to kill a black cove and a white cove of Mr. Edwards, which was done accordingly: And this examinant saith, that she sent her gray imp, Elizabeth Clark a black imp, and Elizabeth Gooding a white imp: And this examinant saith, that

about thirty yeeres since, shee sent a gray imp to kill two horses of one Mr. Bragge of Misley, which were killed accordingly; and that the occasion of her malice was, because Mistresse Bragge had told this examinant, that shee suspected her to be a naughty woman; and this examinant confesseth, that she and the said Elizabeth Gooding, sent either of them an imp to destroy the childe of the said Mr. Edwards; this examinant's imp being then a white one, and Elizabeth Gooding's a black imp; and that about thirty yeeres since, this examinant had the said white imp and two others, a grey and a black imp of one Anne, the wife of Robert Pearce of Stonk in Suffolk, being her brother; and that these imps went commonly from one to another, and did mischief where ever they went; and that when this examinant did not send and employ them abroad to do mischief, she had not her health, but when they were employed, she was healthfull and well, and that these imps did usually suck those teats which were found about the privie parts of her body; and that the said imps did often speak to this examinant, and told her, she should never feelee hell torments, and that they spake to her in an hollow voyce, which she plainly understood: And this examinant also confesseth, that she sent her gray imp to Elizabeth, the daughter of Robert Kirk of Mannintree, about three yeeres since, to destroy her; and upon the sending of the said imp, the said Elizabeth languished by the space of one whole year untill shee dyed, and that the occasion of offence this examinant took against her the said Elizabeth was, for that shee had asked a coife of the said Elizabeth, which shee refused to give to this examinant: And further, this examinant saith, that long since, but the exact time she cannot remember, she sent her gray imp to kill the daughter of the widow Rawlyns of Misley aforesaid; and the reason was, because this examinant was put out of her farm, and the said widow Rawlyns put in, where shee dwelleth at this present. And moreover, this examinant confesseth, that she was acquainted with the sending of an imp by the aforesaid Elizabeth Gooding, to vex and torment Mary the wife of John Tayler of Mannintree aforesaid about three yeeres since; and this examinant being asked why she did not discover it to the said Mary, she said, the Devill would not suffer her, and that the cause of the said Elizabeth Gooding's malice against the said Mary was, because the said Mary refused to give to the said Elizabeth some beeregood. And lastly, this examinant saith, that about eight weeks since, this examinant, the said Elizabeth Gooding, and one Anne West of Lawford widow, met together at the house of the said Elizabeth Clark, where there was a book read, wherein shee thinks there was no goodness.

The Information of Grace the wife of Richard Glascock of Mannintree, taken upon oath before the said Justices the 11th day of April, 1645.

This informant saith, that there being some falling out between Mary the wife of Edward Parsley of Mannytreet, and one Hellen Clarke, the wife of Thomas Clarke (which said Hellen is the daughter of the said Anne Leech, whose confession doth immediately precede) this informant heard the said Hellen to say, as the said Hellen passed by this informants door in the street, that Mary the daughter of the said Edward and Mary Parsley should rue for all, whereupon presently the said Mary the daughter, fell sick, and died within six weeks after.

The Information of Edward Parsley of Mannytreet, taken upon oath before the said Justices, April 11, 1645.

This informant saith, that his said daughter sickned very suddenly, as the said Grace Glascock hath before informed, and died about six weeks since; and this informant doth verily believe, the said Hellen Clark was the death of his said daughter.

The Examination of Hellen Clark, taken before the said Justices the 11th of April, 1645.

This examinant confesseth, that about six weeks since, the Devil appeared to her in her house, in the likeness of a white dog, and that she calleth that familiar Elimanzer; and that this examinant hath often fed him with milk-pottage; and that the said familiar spake to this examinant audibly, and bade her deny Christ, and shee should never want, which shee did then assent unto, but doth altogether deny the killing of the daughter of the said Edward Parsley.

The Information of Prudence Hart, the wife of Thomas Hart of Lawford, taken upon oath before us the 13 of April, 1645.

This informant saith, that about eight week since, being at her parish church, on the Sabbath day, half a mile distant from her house, and being about twenty weeks gone with child, and to her thinking, very well and healthfull, upon the sudden shee was taken with great pains, and miscarried before shee could be got home; and this examinant saith, that about two moneths since, being in her bed, in the night, something fell down upon her right side, but being dark, she cannot tell in what shape it was: and that presently she was taken lame on that side, with extraordinary pains and burning, but recovered again within a few dayes after: and this informant further saith, that she verily believeth, that Rebecca West, and Anne West her mother, were the cause of her pains; for that the said Rebecca hath in part of her confession expressed, that she had much maliced this informant, because the said Rebecca West ever thought this informant to be her greatest enemy.

The Information of John Edes, Clerke, taken upon oath before the said Justices the 28th day of April, 1645.

This informant saith, That Rebecca West confessed unto him, that about seven years since, shee began to have familiaritie with the Devil, by the instigation of her mother Anne West; who hath appeared unto the said Rebecca at severall times, in diverse shapes: at one time in the likeness of a proper young man, who desired of her, that he might have the same familiaritie with her, that others that appeared unto her before had had: promising that if shee would, he would then doe for the said Rebecca what she desired, and avenge her on her enemies; but required further, that shee would deny God, and relie upon him. Now there was one Thomas Hart of Lawford, where the said Rebecca lived, with her said mother, Anne West, and the said Rebecca told this informant, that shee required of him, that hee would avenge her on the said Hart by killing his son, who not long after was taken sick, and dyed, whereupon the said Rebecca told this informant, that she conceived hee could do as God; after which time she gave entertainment to him, who lay with her as a man; and the said Rebecca further confessed to this informant, that whilst she lived at Rivenall in the said county of Essex, the said Anne her mother, came to the said Rebecca, and told her the barley corn was picked up (meaning one George Frances (the only son of one George Frances, one of the chief inhabitants of that town, where the said Anne West dwelt) and that his father thought the said George his son was bewitched to death; and the said Anne then said unto the said Rebecca, be it unto him according to his faith.

The Confession of Rebecca West, taken before the said Justices at Mannytreet, the 21 of March, 1645.

This examinant saith, that about a moneth since, the aforesaid Anne Leech, Elizabeth Gooding, Hellen Clark, Anne West, and this examinant, met all together at the house of the aforesaid Elizabeth Clark in Mannytreet, where they together spent some time in praying unto their familiars, and every one in order went to prayers; afterwards some of them read in a book, the book being Elizabeth Clarks; and this examinant saith, that forthwith their familiars appeared, and every one of them made their severall propositions to those familiars, what every one of them desired to have effected: and this examinant saith, that first of all the said Elizabeth Clark desired of her spirit, that Mr. Edwards might be met withall about the middle bridge, as hee should come riding from Eastheryboul in Suffolk; that his horse might be scared, and he thrown down, and never rise again: and this examinant saith, that the said Elizabeth Gooding desired of her spirit, that shee might be avenged on Robert Tayler's horse, for that the said Robert suspected the said Elizabeth Gooding for the killing of an horse of the said Robert formerly: and this examinant saith, that the said Hellen Clark desired of her spirit, that shee might be re-

venged on two hogs in Misley street, (being the place where the said Hellen lived) one of the hogs to die presently, and the other to be taken lame; and this examinant further saith, that Anne Leech desired of her spirit, that a cove might be taken lame of a myns living in Mannyntrere, but the name of the man this examinant cannot remember: and this examinant further saith, that the said Anne West, this examinant's mother, desired of her spirit, that shee might be freed from all her enemies, and have no trouble: and this examinant saith, that shee desired of her spirit, that shee might be revenged on Prudence the wife of Thomas Hart, and that the said Prudence might be taken lame on her right side. And lastly this examinant saith, that having thus doue, this examinant, and the other five, did appoint the next meeting to be at the said Elizabeth Goodings house, and so departed all to their owne houses.

The Information of Richard Edwards of Mannintree, Gent. taken upon oath before the said Justices the 23rd of April, 1645.

This informant saith, that not long since, about three moneths to his best remembrance, as he was coming from Eastberyholt in Suffolke, halfe an houre withiu evening; within ten score of the middle bridge (according to the desie of the said Elizabeth Clarke, as is declared in the confession of the said Rebecca Weste) this informants horse started with him, and greatly endangered him; and he heard something about his horse cry, Ah, ah; much like the shrieko of a poicat. And this informant saith, That with much difficulty he saved himselfe from being thrown off his horse. All which, this informant reported to his wife and neighbours as soone as he came home.

The Information of Matthew Hopkins, Gent. taken upon oath before the said Justices the 13th of April, 1645.

This informant saith, That being lately at Colchester, he went to the castle, where the said Rebecca Weste, with the other five, are secured untill the next gaole delivery: and this informant going to Rebecca Weste, and asking her how shee came first to be a witch, the said Rebecca told this informant, that about a yeare since, or thereabouts, halfe an houre before sun-set, the said Anne Weste (her mother) carried the said Rebecca Weste towards Mannintree, (which is about a small mile from the place where the said Anne dwelt) and the said Rebecca told this informant, that as her mother and shee walked together, the said Anne told the said Rebecca, shee must keepe secret whatsoever shee saw, whither they were then going; and the said Rebecca promised so to doe; and the said Rebecca told this informant, that her mother and shee went to the house of the aforesaid Elizabeth Clarke, where at their coming in they found the aforesaid Anne Leech, widow, Elizabeth Gooding, Hellen Clarke, and the house-keeper Elizabeth Clarke, and that forthwith the Devill appeared to them

in the shape of a dogge; afterwards in the shape of two kitlyns; then in the shape of two dogges; and that the said familiars did doe homage in the first place to the said Elizabeth Clarke, and skipped up into her lap, and kissed her; and then went and kis-ed all that were in the roome, except the said Rebecca: and the said Rebecca told this informant, that immediately one of their company asked the said Anne her mother, if shee had acquainted her daughter (the said Rebecca) with the businesse; and her mother answered shee had, and told them all, they need not feare her the said Rebecca for revealing any thing: and the said Rebecca told this informant, that forthwith the said Anne Leech pulled out a booke, and swore the said Rebecca never to reveale any thing shee saw or heard; and if shee should discover any thing, they all told the said Rebecca, shee should endure more torments on earth, then could be in hell: and the said Rebecca told this informant, that shee promised to keepe all their secrets; and moreover they all told her, that shee must never confesse any thing, although the rope were about her necke, and shee ready to be hanged: and that after she had consented to all these things, the Devill came into her lap, and kissed her, and promised to doe for her what she could desire; and that within halfe a yeare after the Devill appeared to her the said Rebecca, as shee was going to led, and told her, he would marry her, and that shee could not deny him; shee said he kissed her, but was as cold as clay, and married her that night, in this manner; he tooke her by the hand and lead her about the chamber, and promised to be her loving husband till death, and to avenge her of her enemies; and that then shee promised him to be his obedient wife till death, and to deny God, and Christ Jesus; and the said Rebecca told this informant, that shee sent the Devill to kill the sonne of the said Thomas Hart, which he did within one fortnight; and that after that shee tooke him for her God, and thought he could doe as God.

The Information of Susan Sparrow, taken upon oath before the said Justices the 25th day of April, A. D. 1645, at Little Bentley.

This informant saith, That about thirty yeares sinte, living under the same rooffe with Mary Greenleif of Alresford, either of them had a daughter of about thirteen or fourteen yeares of age, and being one night in bed with their children, this informant heard the childe of the said Mary Greenleif to cry out in a fearefull manner; oh mother, now it comes, it comes, oh helpe mother, it hurts me, it hurts me; whereupon this informant called to the said Mary, and said, good-wife Greenleife, good-wife Greenleife, if your childe be asleepe, awaken it, for if any body comes by, and heare it make such moane (you having an ill name already) they will say you are suckling your impes upon it: whereupon the said Mary replied; I doe so indeed, and I will fee

with them (meaning her said imps,) that they shall suck my daughter one night, and thine another: and this informant saith, that the very next night, her childe cried out in the same manner, and clasped her arms about this informant's necke, being much affrighted, sweating, and shrieking in a terrible manner, complaining that shee was nipped and pinched on her thigh; and that the next morning searching what the cause should be, shee found above the right knee of her childe, a black and blew spot, as broad and long as her hand: and this informant saith, that her childe did complaine on that leg, at least a moneth after. And this informant saith, that the house where this informant and the said Mary did dwell together, was haunted with a leveret, which did usually sit before the dore: and this informant knowing that one Anthony Sharlock had an excellent greyhound that had killed many hares; and having heard that a childe of the said Anthony was much haunted and troubled, and that the mother of the childe suspected the said Mary to be the cause of it: this informant went to the said Anthony Sharlock and acquainted him, that a leveret did usually come and sit before the dore, where this informant and the said Mary Greenleife lived, and desired the said Anthony to bring downe his greyhound to see if he could kill the said leveret; and the next day the said Anthony did accordingly bring his greyhound, and coursed it, but whether the dog killed it this informant knows not: but being a little before coursed by good-man Merrills dog, the dog ran at it, but the leveret never stirred, and just when the dog came at it, he skipped over it, and turned about and stood still, and looked on it, and shortly after that dog languished and dyed. But whether this was an impe in the shape of a leveret, or had any relation to the said Mary, this informant knows not, but does confesse she wondered very much to see a leveret, wilde by nature, to come so frequently and sit openly before the dore in such a familiar way.

**The Information of Elizabeth Hunt and Priscilla Briggs,** taken upon oath before the said Justices the 25th day of Aprill, 1645.

These informants say, That being by the said justices employed to search the said Mary Greenleife, upon suspect for being a witch, these informants found that the said Mary had bigges or teates in her secret parts, not like emerods, nor in those places where women use to be troubled with them; and that they verily beleve, these teates are suckled by her imps; for that these informants have been formerly employed to search other women suspected for witchcraft, who have had the like bigges, and have afterwards confessed themselves to be witches.

**The Examination of Mary Greenleife,** taken before the said Justices, April 25, 1645.

The examinant being asked how she came by those teats which were discovered in her se-

cret parts, she saith she knows not unless she were born with them: but she never knew she had any such until this time, they were found in those parts upon the said search; And she does deny that ever she had any imps sucked on these teats; But she does confesse she hath seen a leveret once sitting before her doore within a yard of the thre-hold; and that she wondered much at it, being about noon time as she remembreth. And further saith, she is not guilty of any accusation charged upon her this examinant.

**The Information of Elizabeth Otley of Wyvenhoe,** taken upon oath before the said justices, April 25, 1645.

This informant saith, that Alice Dixon, who now stands committed for a suspected witch, did in the presence of Mary Johnson of the same town, charge and accuse the said Mary Johnson to be the death of this informant's child, saying, that the said Mary Johnson did carry an impe in her pocket to this informant's house, and put the said impe into the house, at an hole in the doore, bidding it go rock the cradle, and do the businesse she sent it about, and return to her again: And this informant saith, that upon a Munday before Michaelmas last, the said Mary Johnson came to the house of this informant, and gave her child an apple, and kissed it; And within a short time after the said child sickned and died; And the said Alice Dixon did also affirm, that the impe which the said Mary Johnson sent to this informant's house, was in shape somewhat like a rat, but without a tayl and eares. And this informant saith, that the said Mary Johnsons answer was, that if she did it, she did it, she could but receive punishment for it. And at the said time the said Mary Johnson said, the said Alice Dixon did the mischief to this informant's child herself. And this informant further saith, that after the said Alice Dixon had made this discovery, she, this informant, was taken with extreme pains in her body, and that during the time of her extremity, the said Mary Johnson did many times come to this informant's house, perswading her, that she was not the death of this informant's child: But this informant could not be satisfied untill she had gotten the blood of the said Mary Johnson; And meeting with her after long scuffling, this informant made the said Mary Johnsons teeth to bleed, and immediately after, this informant's extraordinary pains left her, and her stomach came to her, having eat little or nothing a fortnight before, and slept very well the night following, having been restless by reason of her extreme pains all the time aforesaid. And this informant further saith, that the next day after the said Mary Johnson had given this informant's child the apple, the child was taken with very violent fits, and in the fits, although the child was but two years old, yet this informant could very hardly with all her strength hold it down in the cradle, and so continued untill it died.

The Examination of Mary Johnson, taken before the said Justices the 25 of April, 1645.

This examinant saith, that she is not guilty of any one particular charged upon her in the information of the said Elizabeth Otley touching the killing of the child of the said Elizabeth.

The Information of Joseph Long, Minister of Clacton in the County of Essex, taken before the said Justices April 29, 1645.

This informant saith, that Anne the wife of John Cooper of Clacton aforesaid, being accused for a witch: Confessed unto this informant, that she the said Anne was guilty of the sin of Witchcraft; and that she hath had three black imps suckled on the lower parts of her body; called by the names of Wynowe, Jeso, and Panu: And this informant saith, that the said Anne told him, that once she cursed a colt of one William Cottingams of Clacton aforesaid, and the said colt broke his neck presently after going out of a gate: And the said Anne further confessed unto this informant, that she the said Anne offered to give unto her daughter Sarah Cooper an impe in the likenes of a gray kite, to suck on the said Sarah; which imps name the said Anne called Tom boy: and told the said Sarah, there was a cat for her; And this informant saith, that the said Anne confessed unto him, that she the said Anne about ten years since falling out with Johan the wife of Gregory Rous of Clacton aforesaid; the said Anne Cooper sent one of her imps to kill the daughter of the said Gregory and Johan, named Mary: And this informant saith, that to his own knowledge about the same time the said child was strangely taken sick, and languishing, within a short time died.

The Information of Roger Hempson, taken upon oath before the said Justices, April 29, 1645.

This informant doth confirm the information of the said Joseph Longe, and concurs in every particular.

The Information of Roger Hempson, taken upon oath before the said Justices, April 29, 1645.

This informant saith, that Mr. Longe telling Elizabeth Hare, that she was accused by one Mary Smith, for giving of her the said Mary two imps: And that the said Elizabeth Hare, praying to God with her hands upward; that if she were guilty of any such thing, he would shew some example upon her; And this informant saith, that presently after she shaked and quivered, and fell down to the ground backward, and tumbled up and down upon the ground, and hath continued sick ever since.

The Information of Anaball the wife of George Durrant, taken upon oath before the said Justices, April 29, 1645.

This informant saith, that about ten moneths since, going from Wivenhoe towards Fingering-

hoe, in the county of Essex, by the way Mary Johnson the wife of Nicholas Johnson met with this informant, whom this informant never saw before to her knowledge; And this informant leading her child upon her hand, being about two years old, and perfectly well: the said Mary Johnson took occasion of her own accord to commend the said child, saying, it was a pretty child; and stroaked it upon the face, and gave it a peece of bread and butter, and so left this informant. And this informants child did eat a peece of the said bread and butter: and within half a quarter of an houre after, her said child shrieked and cried out it was lame. And this informant carried her child home, and had the advice of one Mr. Dawber a chirurgeon, who could find no naturall cause of its lamenesse; and so the said child continued for the space of eight dayes shrieking and tearing it self, and then died.

And further, this informant saith, that immediately after the death of her child, she was taken with extreme pains in her body, some times every day or at least every third day, for the space of seven or eight moneths together, as if she had been to be delivered of a child, but was not with child; and this informant saith, that setting up of broome in an out-house presently after her child was dead, she had the perfect representation of a shape, to her thinking, like the said Mary Johnson, and was struck with a lamenesse in her arms, and such a stiffnesse that three or foure that came to help her, were not able to bow her arms: and this informant continued speechlesse all that day and the night following, and had such a weaknesse in the rest of her limbes, that she was carried into her house by some of her friends, and continued by the space of a fortnight, being before untill this present (as she conceived) in perfect health and strength: and further this informant saith, that she being charged by the constable by vertue of a warrant to give this her information before the said justices against the said Mary Johnson this day; this informants husband called her up in the morning, wishing her to make her ready to go before the said justices; and presently after he gave a great shriek, and said the said Mary Johnson would be his death, and had a great swelling risen up in his breast, and now lies sweating, and in great extremity. And at this very instant a noise was heard in the roome where her husband lay like an hornet, and thereupon her husband cried out, It comes, it comes; Now goodwife Johnsons impe is come, now she hath my life: and forthwith a great part of the wall in the said roome fell down. And this informant saith, that she doth verily beleave the said Mary Johnson was the cause of her childs death: and that she is now the cause of her husbands extremity.

The Information of Ric. Carter and Henry Cornwall of Thorp, taken upon oath before the said Justices, April 29, 1645.

These informants say, that being appointed

to watch Margaret Moone, after she was accused and apprehended for a witch, the said Margaret going about the roome, these informants did see a thing drop from under her coats (as they thought) in the likeness of a rat for bignesse and shape, but of a gray colour; and presently there was such an extreme offensive stink in the roome, that these informants were scarce able to endure to stay in it; and these informants asking the said Margaret what it was that dropped from her, she bids them coop it up and catch it if they could. And this informant Henry Cornwall saith, that the said Margaret did confesse to him that she had twelve imps, and called them by their names; of which he remembers onely these following: Jesus, Jockey, Sandy, Mrit. Elizabeth, and Collyn.

The Information of Will. Dammon, Hen. Cornwall, Bevis Vincent, and Tho. Buries, taken upon oath before the said Justices, April 29, 1645.

These informants say, that upon the 21. day of April last past, they heard Margaret Moone confesse, that she was a witch, and that she had twelve imps, that she had killed a cow of Stephen Cookers, and had two cows more of the said Stephen in handling; that she had killed a cow and a sow of Henry Robertsons. That she was partner with the aforesaid Eliz. Clark of Mannintree, in killing of a child of one Mr. Edwards of Mannintree aforesaid, and spoiling of 3 brewings of beere of the said Mr. Edwards. That she the said Margaret Moone spoiled a batch of bread of one Philip Berrimans; that she was the cause that one Philip Damm's horse broke his neck going down an hill in his wagon. And the said informant saith, that the said M. Moone did freely and voluntarily confesse unto him, without any question being asked, that she was the cause of the death of Johan Cornwall this informants daughter. And this informant saith, that the said Margaret Moone before his child fell sick, sent for this informant to do some work for her, and then she desired to buy an hooke which he carried with him in his hand; and they agreed she should have the said hooke for half a peck of apples: and as this informant went home he did eat one of the said apples, and was presently taken sick with an extreme shaking and pain in all parts of his body; and his informants wife knowing the said Margaret Moone to be a woman of a very bad fame and suspected for a witch, and had formerly been questioned at an Assize for the same, she flung away the apples. And this informant saith, that he continued in great extremity for the space of twelve weeks, and most part of that time deprived of his senses. And at the same time his wife was taken in the same manner, and is not yet perfectly recovered. And lastly this informant saith, that the next day after he had been at the said Margarets house as aforesaid, that his child (which the said Margaret confessed she was the death of) was taken sick with strange fits, and shriekings out,

and so continued languishing for a moneth, and died.

The Information of Richard Caley of Thorpe, taken upon oath before the said Justices, April 29, 1645.

This informant saith, that being called into the house where Bevis Vincent, and Henry Cornwall were appointed by the neighbours of Thorpe aforesaid to watch Margaret Moone, the said Margaret did confesse before this informant, that she had by witchcraft killed a cow and a sow of one Henry Robertsons. And that one Henry Dorr being then called to write what she should confesse, the said Margaret refused to make any further discovery, before this informant; but fell upon other discourse, saying, that she had been told forty times, that this informant thought in his conscience she was no witch: and that this informant knew that one William Caley his brother let the said Margaret an house about twenty yeers since, and afterwards warned her out of the said house; and that then she went into an house that was built for her by one Thomas Turner, and being also turned out of Turners house, that one Rawbood and his wife gave ten shillings more for the said house, then the said Margaret, and came and dwelt in the said house: But the said Margaret saith, they (meaning the said Rawbood and his wife) had as good they had not medled with the house, for they did never thrive after. And this informant saith, that after the said Rawbood had taken the said house, he and his wife were always lame or sick untill they died: and that the wife of the said Rawbood being a very tidy and cleanly woman, sitting upon a block after dinner with another neighbour, a little before it was time to go to church (and as he remembers) upon an Easter day, the said Rawboods wife was on the sudden so filled with lice, that they might have been swept off her cloaths with a stick: and this informant saith he did see them, and that they were long, and lean, and not like other lice. And this informant being asked, whether the said Margaret were at this time sensible, he saith that she spake very plainly and very intelligently, discoursing of some things done long before, her memory serving her very exactly.

The Information of Francis Milles, taken upon oath before the said Justices, April 29, 1645.

This informant saith, that being employed by the neighbours of Thorpe aforesaid, to search Margaret Moone who was suspected for a witch, she found three long teats or bigges in her secret parts, which seemed to have been lately sucked; and that they were not like pyles, for this informant knows well what they are, having been troubled with them herself. And this informant saith, that she asking the said Margaret for her imps, which sucked those teats: she said, if she might have some bread and beere, she would call her said imps; which being given unto her, she put the bread into the beere, and set it against an hole in the

wall, and made a circle round about the pot, and then cried, Come Christ, come Christ, come Mounsier, come Mounsier: And no impe appearing, she cried out and said, she had devilish daughters which had carried her imps away in a white bagge, and wished they might be searched, for they were naught: And upon the searching of her daughters, this informant found that two of them had biggs in their privy parts as the said Margaret their mother had.

**The Information of Mary Philips, Elizabeth Harris widow, Susan Burles and Philip Tumnor,** taken upon oath before the said Justices, April 29, 1645.

These informants do all and every of them concur with Frances Milles in her said information, in that particular concerning the teats of the said Margaret Moone, and her two daughters; and the said Mary Philips doth also confirm and concur with that part of the information of the said Frances Milles, touching the pot, the circle, and the calling of the imps by the said Margaret Moone.

And this informant Mary Philips doth also say, that being sent for to search the said Margaret Moone, as she was coming towards Thorp aforesaid, and going over a broad foot bridge, this informant sensibly felt a great blow on her head, which strook her into a ditch up to the neck. And this informant and the said Francis Milles doe both of them say, That as soon as they came into the room where the said Margaret Moone was, she called these two informants, Mannin'tree rogues (they both dwelling at a town so called), and said, Who a devil sent for you? But I hope I have met with some of you.

**The Examination of Margaret Moone,** taken before the said Justices, the 29th day of May, 1645.

This examinant being examined to all the particulars charged upon her, in all the aforesaid severall informations, denies every particular.

**The Examination of Judith Moone,** daughter of the said Margaret Moone, taken before the said Justices, the 29th day of April, 1645.

This examinant (being a single woman, and having such marks of a witch as aforesaid) saith, that about a fortnight before her mother was apprehended for a witch, the said Margaret bid this examinant goe and fetch a bundle of wood, and this examinant told her mother shee would not fetch any wood: Whereupon the said Margaret threatened this examinant, and told her shee had as good have gone for some wood; and that the next night as this examinant lay in her bed, she felt something come into the bed, about her legges, being at that time broad awake, and that shee searched to see what it should be, but could not finde any thing.

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**The Information of Bridget Reynolds,** the wife of Edward Reynolds of Ramsey in the said county of Essex, taken upon oath before the said Justices, the 3rd of May, 1645.

This informant saith, That she with some other women, were required to search Sarah Hating the wife of William Hating, Elizabeth Harvy widow, and Marian Hocket widow, who are all suspected for Witchcraft, and upon her said search (being a midwife) found such marks or bigges in their privy parts, that she never saw in other women: for Sarah Hating had foure teats or bigges in those parts, almost an inch long, and as bigge as this informant's little finger: That the said Elizabeth Harvy had three such biggs, and about the said scantling: And that the said Marian Hocket had no such bigges; but was found in the same parts not like other honest women. And this informant further saith, That the said Elizabeth Harvy said (since she was found with the said suspicious marks) unto this informant, That if she were a witch, she was so made by the said Marian Hocket; for that the said Marian brought unto her the said Elizabeth Harvy, three things about the bignesse of mouses, and willed the said Elizabeth to make much of them, for they were pretty things; which the said Elizabeth received: And the said Elizabeth told this informant, that ever since she received those three things which the said Marian delivered unto her, she hath been much torn and troubled in her privy parts, where the said bigges were found. And that the said three things were delivered to her the said Elizabeth about six or seven years since.

**The Information of Elizabeth Durden,** the wife of Edward Durden, and Mary Philips, taken upon oath before the said Justices, the 3rd day of May, 1645.

These informants do concur in every particular with the said Bridget Reynolds, in her information touching the search of the said Sarah Hating, Elizabeth Harvie, and Marian Hocket: And this informant Elizabeth Durden further saith, that the said Elizabeth Harvie told her, that if shee were a witch, shee was so made by the said Marian Hocket.

**The Information of Francis Stock and John Batilly,** taken upon oath before the said Justices, May 3rd, 1645.

These informants say, that the said Elizabeth Harvie confessed to them with many teares, that shee had three marks, two before and one behinde (as is already informed by Bridget Reynolds and others), and that the said Marian Hocket made her have the said marks or bigs, by bringing of three things to her the said Elizabeth, and telling her, if shee would receive them, shee should never want so long as she lived; which three things have since made the said marks in her privie parts, and the said Elizabeth told these informants, that the said three things were of a reddish colour, and that since, the said Marian and

the said Elizabeth falling out, she the said Elizabeth would have put away and sent home the three things which the said Marian brought to her, and that ever since the said things have tormented her in her bed, in the places aforesaid, as if they had pulled her in pieces.

The second Information of Francis Stock, taken before the said Justices upon oath, May 3d, 1645.

This informant saith, that about five yeeres since, being one of the constables of Ramsay aforesaid, hee impressed William Hating, husband to the aforesaid Sarah Hating for a souldier, whereupon the said William threatened this informant very much, and not long after, this informant's wife told him, shee espied a snake lying upon a shelf in this informant's house, about three yards high from the ground, which falling down into the house, shee endeavoured to kill with a spade; and striking at it, the snake suddenly vanished away, and could no where be found: And this informant saith, that presently after his said wife was taken sick with extraordinary fits, pains and burnings all over her body, and within one week dyed: And further this informant saith, that within two or three dayes, after the death of his said wife, hee had a daughter taken sick after a very strange manner, who in all the time of her sickness, cryed out much on the said Sarah, the wife of the said William Hating, saying, that the said Sarah was the cause of her death, and dyed presently after; and that within two or three dayes after the death of his said childe, this informant had another childe taken sick in the same manner, and within a few dayes dyed also: And lastly, this informant saith, that about three quarters of a yeer after, he had a man-servant, that for some ill language given to him by John Hating, one of the sons of the said William and Sarah Hating, his said servant did beat the said John, and the very next day hee was taken sick, and so continued in a pining and languishing condition, crying out often of the said Sarah, that she had bewitched him, and was the cause of his death, which soon after ensued.

The Information of Francis Stock, and John Felgate, taken upon oath before the said Justices, May 3, 1645.

This informant John Felgate saith, that speaking with one Sarah Barton, the sister of the said Marian Hocket (which said Sarah is now imprisoned in the gaole at Harwich upon suspicion of Witchcraft), who told this informant, that the said Marian had cut off her bigs, whereby she might have been the more suspected to have been a witch, and laid plasters to those places: And the said Francis and John say, that the said Sarah Barton, told them, that the said Marian had given and delivered unto her the said Sarah three imps, and that the said Marian called them by the names of Littleman, Pretty-man, and Dainty.

The Examination of Marian Hocket, Sarah Hating, and Elizabeth Harvie of Ramsey within the County aforesaid, taken before the said Justices, May 3, 1645.

This examinant, Marian Hocket saith, that shee is not guilty of any of the particulars charged upon her, touching witchcraft, notwithstanding the severall accusations against her.

This examinant, Sarah Hating saith, that shee is not guilty of any particular wherewith shee stands charged in the information of Francis Stock and others.

This examinant, Elizabeth Harvie saith, that about halfe a yeer since, the said Marian Hocket brought three things to her house, two of them being smaller then mouses, and the other somewhat bigger and longer; and that the said Marian told this examinant they were pretty things, and would do her and this examinant good, if shee this examinant would keep them; and that afterward shee was very much pained in those parts of her body where the said tents or bigs were discovered by the said searchers, as aforesaid.

The information of Robert Turner of St. Osyth Carpenter, taken upon oath before the said Justices, May 6, 1645.

This informant saith, that about eight dayes since, his servant was taken sick, shacking and shrieking, and crying out of Rose Hallybread, that shee had bewitched him: And this informant saith that sometimes his said servant, since hee was taken sick, as aforesaid, hath crowed perfectly as a cock; sometimes barked like a dog; sometimes violently groaned beyond the ordinary course of nature; and struggling with such strength (being but a youth), that four or five strong men were not able to hold him down in his bed; and sometimes sung divers and sundry perfect tunes: And that this informant could not perceive his mouth to open, or so much as his lips to stir all the time of his singing.

The Examination of Rose Hallybread, taken before the said Justices, the 6th of May, 1645.

This examinant saith, that about fifteen or sixteen yeeres since, there was an imp brought to her house by one Goodwife Hagtree, which imp this examinant entertained, fed it with oatmeale, and suckled it on her body, for the space of a yeer and a halfe, or thereabouts, and then lost it: And this examinant further saith, that about half a yeer since, one Joyce Boanes (who is now also accused for Witchcraft), brought to this examinant's house another imp, in the likeness of a small gray bird, which this examinant received, and carried it to the house of one Thomas Toakley of St. Osyth, and put the said imp into a cranhy of the doore of the said Toakley's house, after which time the son of the said Thomas languished, and dyed, crying out of this examinant, that shee was his death: And this examinant further saith, that about eight dayes since, Susad

Cock, Margaret Landish, and Joyce Boanes, (all which stand now suspected for Witchcraft) brought to this examinaunts house each of them an imp, (in all three) to which this examinaunt added one of her own imps; and then he said Joyce Boanes carried the said four imps to the house of one Robert Turner, to torment his servant, because he had refused to give unto her this examinaunt, the said Susan Cocks, Margaret Landish and Joyce Boanes a few chips: And this examinaunt further saith, that the said Robert Turners servant forthwith fell sick, and oftentimes barked like a dog: And this examinaunt saith, that she believeth that the said four imps were the cause of his barking and sickness.

The Examination of Joyce the wife of William Boanes, taken beore the said Justices, May 6, 1645.

This examinaunt saith, that about thirteen yeers since, shee had two imps which came into the bed to her in the likenesse of mouses, and that they sucked on this examinaunts body; and that afterwards this examinaunt employed and sent the said imps to a farm house in St. Osyth, called Cocker-wick, where one Richard Weleth then lived, where the said imps killed ten or twelve lambs of the said Richards: And this examinaunt saith further, that a little while after, shee sent her said two imps to the house of one Thomas Clynoch, where they killed a calf, a sheep and a lamb: And this examinaunt also saith, that shee carried one of her said imps, called Rug, to the house of the said Rose Hallybread; and that her said imp Rug, with three imps of the said Rose Hallybread, Susan Cock, and Margaret Lindish, each of them sending one, were carried by this examinaunt from the house of the said Rose Hallybread, to the house of the said Robert Turner to kill the servant of the said Robert; whereupon his said servant hath oftentimes crowed like a cock, barked like a dogge, sang tunes, and groaned: And this examinaunt saith, that her said imp made the said servant to barke like a dog; the imp of the said Rose Hallybread enforced him to sing sundry tunes in his great extremity of paines; the imp of the said Susan Cock, compelled him to crow like a cock; and the imp of Margaret Landish made him groan in such an extraordinary manner.

The Examination of Susan Cock, taken before the said Justices the 6th day of May 1645.

This examinate saith, that about three or four yeeres since, one Margery Stoakes, this examinaunts mother, lying upon her death-bed, and this examinaunt comming to visit her, shee the said Margery desired this examinaunt privately to give entertainment to two of her imps, and withall told this examinaunt, they would do this examinaunt good; And this examinaunt saith, that the same night her said mother dyed, the said two imps came to her accordingly, and sucked on her body; And this examinaunt saith, that one of the said imps was like a mouse, and the name of that was

Susan: that the other was of a yellow colour, about the bigness of a cat; and that the name of that imp was Besse: And this examinaunt saith, that she employed her said imp called Besse, together with the imps of the said Rose Hallybread, Joyce Boanes, and Margaret Landish, each of them one, to the house of one where the said imps killed ten or twelve sheep of the said John Spalls; John Spalls; and that the cause of this examinaunts mallice was, because she being with child desired to have some curds, of the said Spalls wife, which she refused, either to give or sell to this examinaunt: And further, this examinaunt saith that about a week since, she, together with Joyce Boanes, Rose Hallybread, and Margaret Landish sent four imps to the house of one Robert Turner, by the said Joyce Boanes to torment his servant, for that the said servant of the said Robert Turner refused to give this examinaunt a sack full of chips: And this examinaunt further saith, that she, together with the said Margaret Landish, sent her imp to the house of one Thomas Mannock in St. Osyth aforesaid, where their said imps killed six or seven shootts or hogges of the said Mr. Mannock; and that the occasion of offence was, because the wife of the said Mr. Mannock refused to give to this examinaunt such relief as she desired, telling this examinaunt, that shee was a young woman, and able to worke for her living.

The Examination of Margaret Landish, taken before the said Justices the 6th day of May, 1645.

This examinaunt saith, that about eight or nine weeks since lying sicke by the fire side in her owne house, something came up to her body, and sucked on her privie parts, and much pained and tormented her: And this examinaunt saith, that if it were an imp that came and sucked her as aforesaid, that the said Susan Cock sent it to her: And this examinaunt denieth; that ever shee joyned with the said Joyce Boanes, Rose Hallybread, and Susan Cock, in the tormenting of the servant of the said Robert Turner, and doth utterly deny the sending of any imp to destroy or kill the hogges of the said Mr. Mannock, as the said Susan Cock hath charged her withall in the examination of the said Susan.

The Examination of Rebecca Jones of St. Osyth, taken before the said Justices the 9th of May, 1645.

This examinaunt saith, that about 24 or 25 yeeres since, dwelling with one John Bishop, of Much-Clacton in the county of Essex as his servant, there came one morning one to the doore of the said John Bishop and knocked, and that this examinaunt going to the doore, shee saw there a very handsome young man, as shee then thought but now shee thinkes it was the devill; who asked this examinaunt how shee did, and desired to see her left wrist, which shee shewed unto him: and that he then tooke a pin from this examinaunts owne

sleeve, and pricked her wrist twice, and there came out a drop of blood, which he took off with the top of his finger, and so departed. And this examinant saith that about a quarter of a yeare after, as shee was going to St. Osyth, (where this examinant doth now dwell) to sell her said masters butter, a man met with her, being in a ragged sute, and having such great eyes, that this examinant was much afraid of him; who came to this examinant and gave her three things like to mouses, having foure feet a piece, but without tayles, and of a black colour, and bid this examinant nurse the said three things, untill he did desire them againe; And this examinant asked the said man, what she should give them to eate, and he told this examinant milke, and that they would not hurt her, and wished her not to be afraid of them: And the said man told this examinant, that those three things which he gave her, would avenge her on her enemies, and bid her murther some, but not too many, and he would forgive her; and then went away from this examinant: And this examinant saith, that the first time she employed any of the said things, shee sent one of them to kill a sowe of one Benjamin Howes of Little-Clacton in the county aforesaid; and the said sowe was killed by the said impe accordingly: And this examinant saith, that the names of her three imps were Margaret, Amie, and Susan: And that a while after, this examinant and one Joyce Boanes, now in prison, did send each of them an impe to kill one Thomas Bumstead of St. Osyth aforesaid, who died about three weekes after. And this examinant saith, that shee beleeveth that the said two imps did kill the said Thomas Bumstead; and the impe name which this examinant sent to destroy the said Bumstead was Margaret: And that the impe which the said Joyce Boanes sent was a dund one like unto a mouse. And this examinant saith, that she did send another of her imps called Amie, to the said Bumsteads house, which did kill the wife of the said Bumstead within a short time after: And this examinant confesseth, that the cause of offence shee tooke so to destroy and kill the said Bumstead and his wife, was because the said Thomas Bumstead did beate the sonne of this examinant for eating up of some honey which he found about the house of the said Thomas Bumstead. And this examinant further confesseth, that shee did send her other third impe called Susan, to afflict the childe of one Mistriass Darcy of St. Osyth aforesaid: But did withall bid the said impe it should not hurt the said child too much, and come away againe: And this examinant saith, that the said imp is come again from the said Mistriass Darcies childe.

The Examination of Johan Cooper, widow, taken before the said Justices, May 9, 1645.

This examinant saith, That she hath been a witch about twenty yeeres, and hath three fa-

miliars, two like mouses, and the third like a frog; the names of the two like mouses are Jack, and the other Prickeare, and the name of the third, like a frog, is Frog. And this examinant saith, that she sent one of her said imps to kill a childe of one Thomas Woodward, which her said impe did kill a fortnight after. And this examinant saith, that shee did send her said impe called Frog, to kill two of John Cartwright's children, of Much-Holland in the county of Essex aforesaid, which said imp did kill the said two children within a fortnight or three weekes after. And this examinant saith further, that at another time shee sent her said imp Frog, to destroy the wife of one George Parby, of Much-Holland aforesaid, which did kill her within three dayes after.

The Examination of Anne Cate, alias Maiden head, of Much-Holland, in the county aforesaid, taken before the said Justices, the 9th of May, 1645.

This examinant saith, That she hath four familiars, which shee had from her mother, about two and twenty yeeres since, and that the names of the said imps are James, Prickeare, Robyn, and Sparrow: and that three of these imps are like mouses, and the fourth like a sparrow, which she called Sparrow. And this examinant saith, that to whomsoever shee sent the said imp called Sparrow, it killed them presently; and that, first of all, shee sent one of her three imps like mouses, to nip the knee of one Robert Freeman, of Little Clacton in the county of Essex aforesaid, whom the said imp did so lame, that the said Robert dyed on that lameness within half a yeere after. And this examinant saith, that she sent her said imp Prickeare to kill the daughter of John Rawlins, of Much-Holland aforesaid, which died accordingly within a short time after; and that shee sent her said imp Prickeare to the house of one John Tillet; which did suddenly kill the said Tillet. And this examinant saith, that shee sent her said imp Sparrow, to kill the childe of one Geore Parby, of Much-Holland aforesaid, which child the said imp did presently kill; and that the offence this examinant took against the said George Parby, to kill his said childe, was, because the wife of the said Parby denyed to give this examinant a pint of milke. And this examinant further saith, that she sent her said imp Sparrow to the house of Samuel Ray, which in a very short time did kill the wife of the said Samuel; and that the cause of this examinant's malice against the said woman was, because shee refused to pay to this examinant two pence, which she challenged to be due to her; and that afterwards her said imp Sparrow killed the said child of the said Samuel Ray. And this examinant confesseth, that as soon as shee had received the said four imps from her said mother, the said imps spake to this examinant, and told her, shee must deny God and Christ, which this examinant did then assent unto.

The Testimony of Sir Thomas Bowes, knight, which he spake upon the Bench, concerning the aforesaid Anne West, shee being then at the Barre upon her Tryall.

That a very honest man of Mannintree, whom he knew would not speake an untruth, affirmed unto him, that very early one morning, as he passed by the said Anne Weste's dore, about foure a clock, it being a moon-light night, and perceiving her dore to be open so early in the morning, looked into the house, and presently there came three or four little things, in the shape of black rabbits, leaping and skipping about him, who, having a good stick in his hand, struck at them, thinking to kill them, but could not; but at last caught one of them in his hand, and holding it by the body of it, he beat the head of it against his stick, intending to beat out the braines of it; but when he could not kill it that way, he tooke the body of it in one hand, and the head

of it in another, and indeavoured to wring off the head: and as he wrung and stretched the neck of it, it came out between his hands like a lock of wooll; yet he would not give over his intended purpose, but knowing of a spring not farre off, he went to drowne it: but still as he went he fell downe, and could not goe, but downe he fell againe, so that he at last crept upon his hands and knees till he came at the water, and holding it fast in his hand, he put his hand downe into the water up to his elbow, and held it under water a good space, till he conceived it was drowned, and then letting goe his hand, it sprung out of the water up into the aire, and so vanished away: and then coming backe to the said Anne West's dore, he saw her standing there in her smock, and asked her, why shee did set her impes to molest and trouble him? to whom she made answer, that they were not sent to trouble him, but were sent out as scouts upon another designe.

177. *Proceedings against ELEVEN MEMBERS of the House of Commons; viz. DENZIL HOLLIS, esq. Sir PHILIP STAPLETON, Sir WILLIAM LEWIS, Sir JOHN CLOTWORTHY, Sir WM. WALLER, Sir JOHN MAYNARD, knights, Major-General MASSEY, Mr. GLYNN Recorder of London, WALTER LONG, esq. Colonel EDWARD HARLEY, and ANTHONY NICHOLL, esq. charged by Sir Thomas Fairfax and his Army, to be Delinquents.\**  
23 CHARLES I. A. D. 1647.† [6 and 7 Rushworth's Collect.: Whitelocke's Memoirs. 3 Cobb. Parl. Hist. 664.]

ON June 15, 1647, was presented to the parliament a long and bold Remonstrance, entitled "A Declaration or Representation from his

Excellency sir Thomas Fairfax, and of the Army under his command, Humbly tendered to the Parliament," It contained many com-

\* As to Delinquents and Malignants, see Hume and Clarendon as cited in the Notes to pp. 22, 111, of this volume. Oldmixon thus explains these terms: "By Delinquent and Malignant, the language of those times, are to be understood persons who endeavoured to introduce arbitrary power, as well ecclesiastical as civil, and to sacrifice the privileges of parliament, and the rights, properties, and liberties of the people to the king's will and pleasure, and under him to their own." 1 Hist. of England, during the reigns of the Royal House of Stuart, 209.

† "In the House of Commons, which was now the scene of all the action that displeased and incensed the army (for the House of Peers was shrunk into so inconsiderable a number, and their persons not considerable after the death of the earl of Essex, except those who were affected to, or might be disposed by the army) they were wholly guided by Hollis and Stapleton, Lewis and Glynn, who had been very popular and notorious from the beginning, and by Waller and Massey and Brown, who had served in commands in the army, and performed at some times very signal service, and

were exceedingly beloved in the city, and two or three others who followed their dictates, and were subservient to their directions. These were all men of parts, interest, and signal courage, and did not only heartily abhor the intentions which they discerned the army to have, and that it was wholly to be disposed according to the designs of Cromwell, but had likewise declared animosities against the persons of the most active and powerful officers; as Hollis had one day, upon a very hot debate in the house, and some rude expressions which fell from Ireton, persuaded him to walk out of the house with him, and then told him, 'that he should presently go over the water and fight with him.' Ireton replying, 'his conscience would not suffer him to fight a duel?' Hollis, in choler, pulled him by the nose; telling him, 'if his conscience would keep him from giving men satisfaction, it should keep him from provoking them.' This affront to the third person of the army, and to a man of the most virulent, malicious, and revengeful nature of all the pack, so incensed the whole party, that they were resolved one way or other to be rid of him, who had that power in the

plaints and required among other things, 'First, That the houses may be speedily purged of such members as for their delinquency, or for corruptions, or abuse to the state, or undue elections, ought not to sit there: Whereof the late elections in Cornwall, Wales, and other parts of the kingdom, afford too many Examples, to the great prejudice of the people's freedoms in the said Elections. Secondly, That those persons who have in the

'unjust and high proceedings against the army, appeared to have the will and confidence, credit and power, to abuse the parliament and the army, and endanger the kingdom in carrying on such things against us (while an army,) may be some way speedily disabled from doing the like, or worse to us, when disbanded and dispersed, and in the condition of private men, or to other the free-born people of England, in the same condition with us;

house, and that reputation abroad, that when he could not absolutely controul their designs, he did so obstruct them, that they could not advance to any conclusion.—They resorted therefore to an expedient, which, they had observed, by the conduct of those very men against whom they meant to apply it, had brought to pass all that they desired; and, in the council of officers, prepared an impeachment of high treason in general terms against Mr. Hollis, and the persons mentioned before, and others, to the number of eleven members of the house of commons. This impeachment twelve officers of the army, colonels, lieutenant colonels, majors, and captains, presented to the house; and within few days after, when they saw the same members still inveigh against and arraign their proceedings, the general and officers writ a letter to the house, 'that they would appoint fit persons on their and the kingdom's behalf, to make good the charge against those members whom they had accused; and that they desired, that those members impeached might be forthwith suspended from sitting in the house; since it could not be thought fit that the same persons who had so much injured and provoked the army, should sit judges of their own actions.' This was an arrow that the house of commons did not expect would have been shot out of that quiver; and though they were unspeakably dismayed, and distracted with this presumption, they answered positively, 'that they neither would, nor could, sequester those members from the house, who had never said, or done any thing in the house worthy of censure, till proof were made of such particulars as might render them guilty.' But the officers of the army replied, 'that they could prove them guilty of such practices in the house, that it would be just in the house to suspend them: that by the laws of the land, and the precedents of parliament, the lords had, upon the very presentation of a general accusation without being reduced in form, sequestered from their house and committed the earl of Strafford, and the archbishop of Canterbury; and therefore they must press, and insist upon the suspending at least of those accused members from being present in the house, where they stood impeached; and without this, they said, the army would not be satisfied.' However the house of commons seemed still resolute, the accused members themselves, who best knew their temper, thought it safer for them to retire, and by far

bearing to appear in the house, to allay the heat of the present contest.—Upon this so palpable declension of spirit in the house, the army seemed much quieter, and resolved to set other agents on their work, that they might not appear too busy and active upon their own concernment. It is very true that the city, upon whose influence the parliament much depended, appeared now entirely Presbyterian; the court of aldermen, and common council, consisted chiefly of men of that spirit; the militia of the city was committed to commissioners carefully and factiously chosen of that party; all those of another temper having been put out of those trusts, at or about the time that the king was delivered up by the Scots, when the officers of the army were content that the Presbyterians should believe, that the whole power of the kingdom was in them; and that they might settle what government they pleased: If there remained any persons in any of those employments in the city, it was by their dissimulation, and pretending to have other affections; most of those who were notorious to be of any other faction in religion, had been put out; and lived as neglected and discountenanced men; who seemed rather to depend upon the clemency, and indulgence of the state, for their particular liberty in the exercise of that religion they adhered to, than to have any hope or ambition to be again admitted into any share, or part in the government: yet, after all this dissimulation, Cromwell and Ireton well knew, that the multitude of inferior people were at their disposal, and would appear in any conjuncture they should think convenient; and that many aldermen and substantial citizens were quiet, and appeared not to contradict or oppose the Presbyterians, only by their directions; and would be ready upon their call. And now, when they saw those leading men, who had governed the parliament, prosecuted by the army, and that they forbore to come to the house, there flocked together great numbers of the lowest, and most inferior people, to the parliament, with petitions of several natures, both with reference to religion, and to the civil government; with the noise and clamour whereof, the parliament was so offended and disturbed, that they made an Ordinance, 'that it should be criminal to gather, and solicit the subscriptions of hands to petitions.' But this order so offended all parties, that they were compelled, within two days, to revoke it, and to leave all men to their natural liberty." Clarendon.

‘and that for that purpose the same persons may not continue in the same power, especially as our and the kingdoms judges in the highest trust, but may be made incapable thereof for the future.’—It then proceeded; ‘And if it be questioned who these are, we thought not fit particularly to name them in this our representation unto you, but shall very speedily give in their names, and before long, shall offer what we have to say against them to your commissioners, wherein we hope so to carry ourselves, as that the world shall see we aim at nothing of private revenge or animosities, but that justice may have a free course, and the kingdom be eased and secured by disabling such men, at least, from places of judicature, who desiring to advantage and set up themselves and their party, in a general confusion have endeavoured to put the kingdom into a new flame of war, than which nothing is more abhorring to us.’

On June 24th, was read in the House of Commons, “An Humble Remonstrance from his Excellency sir Thomas Fairfax, and the Army under his Command, concerning the present state of Affairs, in relation to themselves and the Kingdom; with their Desires and present Resolutions thereupon.” This Remonstrance is at large in 6 Rushworth Collections, p. 383, and 3 Cobbett’s Parliamentary History, p. 640. The following are the material contents of it relating to this Case.

“Our Desires, as soldiers, in behalf of ourselves and other soldiers that have faithfully served the parliament in this kingdom, as also our remaining dissatisfactions in relation thereunto, may be clearly collected out of our several Papers that have been formerly presented to the parliament concerning the same; to which particulars we have not yet received any further satisfaction.—In our last Representation it may appear what our desires are as members of the common-wealth, in behalf of ourselves and all others, for the clearing, settling, and securing of the rights, liberties, and peace of the kingdom, for the justness, reasonableness, necessity, and common concernment whereof unto all, we dare appeal to the whole kingdom, and the world; yet we have hitherto received no answer thereunto, nor can hear of no consideration taken thereupon, to put the things contained therein into any way of resolution or dispatch.—We have since that, in pursuance of the first and second Heads of our Desires in the said Representation, delivered in a Charge against divers Members of the House of Commons, for divers Designs and Practices to the abuse and dishonour of the parliament, the insufferable injury of the Army, the infringement of the rights and liberties both of soldiers and subjects, the breach or hazard of the peace of this kingdom, and the hindering of the relief of Ireland, &c. Upon which, though the main things charged, with the mischievous designs, and further dangerous consequences of them; as also the constant and continued activity of all

or most of the persons charged in relation to those things, be for the most part sufficiently and notoriously known, especially to the parliament itself; yet we find neither any thing done, upon what is so known, nor any way resolved on, or admitted by the parliament, for the examination or discovery of what is less evident unto them; But rather, as if neither the things charged, nor the present sad effects, nor future ill consequences thereof were at all considerable, the whole business seems to be slighted, past over, or set aside.

“Now whereas we find that our first Desire in the paper, for the present suspending the persons impeached from sitting in the house, is judged by some to be against the course and privilege of Parliament, or of ill consequence in the precedent of it, the Charge being but general, and no particular Proof as yet produced to render the proceedings legal, we cannot but remind the parliament,

1. “That as the most and many things charged, with the sad effects and consequences of them, so the constant and continued activity of all or most of the persons charged in relation thereunto, in misinforming, deluding, abusing, or surprising the house, and otherwise, are sufficiently known to the parliament itself, so as the house might upon their past and present cognizance of the same, most justly proceed to suspend them, as in many other cases upon far less occasions, (which never could have produced such sad effects to the kingdom) they have done many other of their members, merely for words spoken, or things moved in the house, alledged to be but against order or custom of the house, and this without any Trial, Proof, or Charge, but merely upon the houses own Cognizance of the things, as we could instance in many Cases since the Parliament began.

2 “Whereas many of the things to which the Charge relates, are things spoke, moved, or done in the house, so as we have yet no clear way opened, particularly to charge or mention them, or to produce proofs to them without some pretence against us of breach of privilege; and therefore, though we think no privilege ought to protect evil men in doing wrong to particulars, or mischief to the public, yet, we have been hitherto so tender of parliament privileges, as that we have only remonstrated the evil of such things done; and supposing the house to have been, as we did and do believe, and if the way were open, without breach of privilege, should not doubt to prove it was, someways misinformed, deluded, surprised, or otherwise abused, in those things by evil members we have frequently, in former papers, before the Charge, put the parliament upon it, (who without colour of breach of privilege might do it) to find out and discover who they were that had so abused them, and to disengage the honour of parliaments from the evil practice and designs of such incendiaries.

“Now since the same difficulties or preju-

dices be yet in our way, (as to the particular Charge or Proof of those things against the members) and the parliament though so often put upon it in our former papers, yet through the powerful interest of the persons guilty, hath not taken any cognizance, what members or others have so abused them, to draw the parliament to such dishonour and inconveniencies, we cannot but again more fully and clearly assert, (as we have in former papers, and shall yet more particularly, if need be, remonstrate) That divers things lately done and passed from the parliament against this Army, as particularly the Order for suppressing the Petitioners, that high Declaration against it, and against all that should proceed in it, putting the faithful servants of the parliament and the kingdom out of the protection of the law, and exposing them as enemies to the state, &c. to the forfeitures of the estates, liberties, life and all, but for going about in an humble, peaceable, and inoffensive way, to desire what was undeniably their due, and dearly earned; and many other such like proceedings both against the army and others, do carry with them such a face of injustice, oppression, arbitrariness, and tyranny, as we think is not to be paralleled, in any former proceedings of the most arbitrary courts, against any private men, but hath brought in insufferable dishonour upon the parliamentary authority and proceedings, (which we are, and others ought to be, deeply sensible of) hath tended to disoblige all men, especially soldiers, from the same, to destroy all just freedom, either of soldiers or subjects, and hath conducted to all other the sad effects, and worse consequences expressed in the charge; and gives us and others cause to conclude, That those worthies who have formerly acted, and carried on things in parliament for public good, right, and freedom, are now awed or over born by a prevailing party of men, of other private interests, crept in, and that neither we, nor any other can reasonably expect right, freedom, or safety, (as private men) or to have things acted in parliament for public good, while the same parties continue there in the same power, to abuse the name and authority of parliaments, to serve and prosecute their private interests and passions, and, under the privilege of parliaments, to shelter themselves under the worst of evils or mischiefs they can do, though to the ruin of the kingdom."

"As to those Particulars included in our Charge, which depend on things done without the Parliament, we are ready, and should most willingly proceed to the particular charging and proving thereof, if first (from the justice of the House in a present proceeding against the persons charged for those things that are already known to the House, being done in it) we could find encouragement to expect any good issue upon those other things, and did we not, on the contrary, find that notwithstanding what is so known to the House, as before expressed, the same persons continue in such power and prevalence, both in the House, and in all the Com-

mittees of the highest trust, as leaves little hopes of right or satisfaction to the army or kingdom in other things, and much less in any just proceedings against themselves, while they continue judges of their own and our concernments, so as we cannot (while they remain in the same power) expect any thing but a continued perverting and making advantage of all things, and especially of those delays which a regular proceeding against them would necessarily endure, altogether to our own and the kingdom's prejudice and danger, to disable or weaken us for those things, which the safety and settling the rights, liberties, and peace of the kingdom requires, and to strengthen themselves by underground practices and preparations at home and abroad, the better to oppose us, and to engage the kingdom in a new war, thereby to accomplish their desires, or at least to save themselves from justice in a common confusion. We say, were it not for these and such other considerations, that leave little hopes of justice to ourselves or the kingdom, while they continue in the same power, and render all delays dangerous and destructive to ourselves and the peace of the kingdom, we should be contented that the business concerning the Members we have charged should be laid aside, till those other things were first settled which our declaration does propound, for the common rights and liberties of the kingdom.

"But finding things still so carried, and that while they were judges in their own causes, they (with that party which they make) will do what they please, and yet render it a breach of privilege to be accused for it as they are, as we have before expressed, we cannot, upon all these considerations, and for all the reasons before expressed, but insist upon it, that the Members charged may first be forthwith suspended from sitting in the House, otherwise we cannot expect any fair proceeding against them upon a more particular Charge, nor think there is any good intended to ourselves or the kingdom."

And it concludes:

"Upon all these grounds, and for all these ends premised, we shall be enforced to take such courses, extraordinary, as God shall enable and direct us unto, to put things to a speedy issue, unless by Thursday night next we receive assurance and security to ourselves and the kingdom, for a more safe and hopeful proceeding in an ordinary way, by having those things granted, which, in order thereto, we have before insisted upon; and shall here, for more brevity and clearness, express ourselves as followeth:" Then follows eight Requisitions, of which the fourth is, "That the members charged may be forthwith suspended, or sequestered the house." Signed by the appointment of his excellency sir THOMAS FAIRFAX, and the Council of War."

*St. Alban's, June 23, 1647.*

At a Council of War at St. Alban's, June 23, 1647. Present,

His exc. sir T. Fairfax, Lieut.-gen. Hammond,  
Lieut.-gen. Cromwell, Commiss.-gen. Ireton,

Col. sir Hard. Waller,	ral Grosvenor,
Col. Fleetwood,	Scout master general
Col. Lambert,	Watson,
Col. Rich,	Adjutant-gen. Deane,
Col. Lilburne,	Lieut.-col. Jubbs,
Col. Okey,	Lieut.-col. Cobbet,
Col. Hewson,	Lieut.-col. Ewers,
Col. Scroope,	Lieut.-col. Salmon,
Col. Harrison,	Lieut.-col. Goffe,
Col. Barkstead,	Major Barton,
Col. Tomlinson,	Major Rogers,
Col. Horton,	Major Saunders,
Col. Pride,	Captain Cunn,
Quarter master gene-	Captain Husbards.

The Remonstrance was agreed on by the officers aforesaid: and afterwards, by direction from the General and Council of War, delivered to the Parliament by col. sir Hardress Waller, col. Rich; and major Tomlinson.

The consideration of the Eleven Members were ordered to be resumed to-morrow.

June 25. The house this day resumed this debate, and after much time spent, ordered, That by the law of the land no Judgment can be given to suspend these Members, or any of them, from sitting in the house, upon the Papers presented from the Army, before the particulars be produced, and proofs made.

Resolved further upon the question, That it doth not appear, that any thing hath been said or done, within the commons house, by any of the Members in question, touching any matters contained in the Papers sent from the Army, for which the house can in justice suspend them.

June 26. The House had much debate this day upon a motion from the Eleven Members charged by the Army, that they might have liberty to absent themselves from the house; and it was at last condescended unto, and the Members accordingly all of them left the house this day.

June 28. The House of Commons received Letters from the Army, of what they desire further, in relation to the safety of the kingdom, which desires were as followeth:

"Whereas we understand the House hath voted, that it doth not appear, that any thing hath been said or done by the Eleven Members within the House, touching any matter contained in the Papers from the Army, for which the House can in justice suspend them, though if way were given and opened, without breach of privilege, for us to charge them with, and for others to be examined freely, to testify unto such things, we should not doubt to make such proceedings and practices of theirs in the house to appear; for which, according to former precedents, they justly might and ought to be suspended, yet we are so tender of privileges of parliament, as that we shall at present forbear to reply, or press further upon that point for the Houses proceedings therein, upon their own cognizance.

2. "Whereas the House of Commons hath voted, That by the laws of the land, no Judgment can be given to suspend those Members from sitting in the House, upon the Papers pre-

sented by the Army, before particulars produced and proofs made, though we think good reasons may be given, and precedents found to the contrary, even in the proceedings of this parliament; as in the case of the earl of Strafford, the archbishop of Canterbury, the lord Keeper Finch, and others. Yet we do declare, that we have both particulars and proofs against them ready to produce, but considering that the proceedings thereupon will probably take up much time; and the present unsettled affairs of the kingdom, in relation to those great matters proposed by us, do require a speedy consideration, we shall be willing that these greater and more general matters of the kingdom be first considered of and settled, before the censure of those Members be determined; and therefore because they may apprehend it some prejudice to them to have their particular charges given in, and lie upon them so long undetermined, we shall be willing to forbear the giving in of the particulars against them, till they may, without interruption to the general affairs, be immediately proceeded upon: but if the House do think fit the particulars against them be first delivered in, we shall be ready to do it.

3. "Whereas we understand, that the Members charged have desired leave from the Houses to withdraw themselves, we cannot but take notice of the modesty thereof so far, as that we are contented therewith, for the present more quiet proceeding to settle the perplexed affairs of the kingdom (which, without any private animosities against persons, is our greatest end in what we do, only we declare, that) as we suppose the gentlemen themselves, from the same grounds that induced them to offer this, will still forbear to offer the contrary, till the matters concerning them be heard and determined, or to make any new interruption or disturbance to the proceeding upon, or settlement of the general affairs of the kingdom; so we hope, and shall confidently expect, that the wisdom and justice of the House will not admit any things to the contrary; or leave it to an hazard thereof, but will use sufficient care and caution against such things, and for the bringing those Members to trial, when the House shall judge it seasonable and safe, as before expressed. By the appointment of his excellency sir THOMAS FAIRFAX, and his Council of War."

Signed, John Rushworth.

Usbridge, June 27, 1647."

June 29. A Petition was presented to the House of Commons, in the name of the Eleven Members impeached, all but recorder Glyn, desiring to come to a speedy Trial. The House ordered, That by Friday next at furthest, the particular Charge of the Army against the Eleven Members, shall be brought into the house.

July 2. There came Letters to the House of Commons, from the Commissioners with the Army, and therein inclosed two Letters from the General, dated July the 1st, at Wickham, whereof one of them gave to understand, that the General had that day appointed lieutenant-

general Cromwel, commissary-general Ireton, col. Fleetwood, col. Ruinsborow, col. Harrison, col. sir Hardress Waller, col. Rich, col. Lambert, col. Hammond, and major Ruinsborow, to treat and debate with the Commissioners of Parliament, upon the Papers and Desires sent from the Army to the Parliament, and the Votes sent to the Army, according to the order of both houses, of the 26th of June, 1647. And the other Letter was in Answer to the Vote of the house on Tuesday last, that a particular Charge should be delivered into the house against the Eleven Members by this day: the General returning this Answer thereunto, "That as he finds a great willingness in his Council of War, to answer the expectation of the House in all things, so in this particular, but the things being of that importance to the kingdom, and the persons charged so many in number, hath taken up more time than was expected; and therefore desire that it may be respite until Tuesday next, at which time they will not fail to bring it in; and that the kingdom shall then see they have not impeached the gentlemen out of any private respects, but in affection and duty to the public."

**The CHARGE against the ELEVEN MEMBERS brought in by the Army.**

July 6. This day the Particular Charge against the Eleven Members, was brought to the House of Commons, by col. Scroop, col. Okey, col. Hewson, col. Pride, lieutenant col. Bowen, lieutenant col. Goffe, major Ruinsborough, captain Berry, Clerke, Carter, Ralph, Saxby, and Mr. Gethings, who attended at the Commons door, and the House having notice thereof, they were called in; col. Scroop spake to this effect. "That by the appointment of the General and Army under his command, and in their names, they were to present a Particular Charge or Impeachment against the Eleven Members." Which being done, and they desired to withdraw, the Members impeached were sent for in, and the Charge read in the house, but the day being far spent, the debate thereupon was put off till Thursday next; at which time the Officers of the Army were to attend, and receive an Answer from the house. The following is a copy of the said Articles:

**A particular CHARGE OF IMPEACHMENT, in the Name of his Excellency sir Tho. Fairfax, and the Army under his Command, against Denzil Hollis, esq. sir Philip Stapylton, sir Wm. Lewis, sir John Clotworthy, sir Wm. Waller, sir John Maynard, knts. major-general Massey, John Glynn, esq. recorder of London, Walter Long, esq. col. Edw. Harley, and Anth. Nicholl, esq. Members of the House of Commons.**

"Whereas on the 15th day of June last, the Heads of a Charge were delivered, in the name of the said Army, unto the Commissioners of Parliament, to be sent up to the Parliament against the persons above-named:

now, in prosecution and maintenance thereof, and according to the power thereby reserved, it is, in the name of the said Army, more particularly charged against the said persons as followeth:

1. That the said Mr. Denzil Hollis, during the late war, in prosecution of the evil designs expressed in the general heads or Articles formerly exhibited, contrary to the trust reposed in him, contrary to his oath taken in June 1648, and contrary to the Ordinance of parliament, dated in Oct. 1643, hath assisted the king in the late unnatural war, and held correspondence and intelligence with the enemy against the parliament, in manner following, viz. He, being one of the special commissioners for the parliament, to present Propositions of both houses to the king at Oxford, did privately, and contrary to his Instructions, at several times, make his addresses unto the king's party there, then in arms against the parliament, namely, to the earl of Lindsey, the earl of Southampton, the lord Saville and others; and did secretly plot and advise with them against the parliament; and did intimate unto them, or one of them, that the said Propositions, then sent unto his majesty by the parliament, were unreasonable: and being demanded what Answer he would advise the king to make to the said Propositions, he did advise that the king should demand a Treaty however, and then declare how unreasonable the Propositions were; and that yet, for the peace of the kingdom, his majesty would treat upon them; but withal wished the Treaty might be in London, whither the king himself should come upon security: Adding, That there was nothing in the world that the violent party (meaning the well-affected party to the parliament against the enemy) did so much fear as his majesty's coming to London, which would be a certain dissolution of their authority and power: and the said Mr. Hollis had those said persons, or one of them, assure the king, That if his majesty knew as much as he knew, his majesty would take his horse and be at London the next day, or words to that effect. — And it being again demanded, Whether (if the king should be willing to come) it would be accepted of? He thereto answered, That certainly it would be much opposed, but yet he was confident, that he and his party (meaning some of the members above-named, and others) should carry it, and wished the king to put it upon that trial. And the said Mr. Hollis was desired by the earl of Lindsey, earl of Southampton, and lord Saville, or one of them, that he would be pleased to draw such an Answer in writing to the said Propositions, as he desired the king should send; and the said earl of Southampton, who was that night to lie in the king's bed-chamber, would persuade the king to condescend unto it; and thereupon he withdrew, and, either the same day or the next, accordingly carried unto the said lords, or one of them, a Paper ready written; which, as he said, was such an Answer to the said

Propositions as he had drawn for the king to send to the Parliament; which was taken by the said lords, or one of them, and carried to the king to be considered of; and so much thereof as advised the king's coming to London was laid by, the king fearing to adventure himself, but the rest of the said Paper the lord Digby (who wrote the king's Answer to the Propositions) made use of, in the same words as Mr. Hollis had set down; who, to ingratiate himself with the king's party, did, about the same time, revise the well-affected members of the house of commons, declaring unto the king's party at Oxford, or some of them, that those well-affected Members (which, to render them the more odious as he conceived, he named the violent Independent Party) had ill intentions, and great averseness to peace; and that nothing would be more pleasing to them than for the king to refuse the Propositions, how unreasonable soever the same were: and he also then said, That the Commissioners of Scotland were very weary of that violent party; and that they, being desperate to establish their Presbytery here as in Scotland, made their addresses to him and his party. All which tended to the protracting of the said late war, and to the hindrance of an happy peace.—And the said Mr. Hollis did also, after that, receive from the earl of Lindsey, at Oxford, a Letter written in white ink, concerning some secret design; and kept it from the knowledge of the house from February till about July after, when it was discovered by him that brought it; but the Letter itself was by Mr. Hollis, after he had read it, burnt; and the earl of Lindsey moved the king for a pass for Mr. Hollis to go to Oxford; but the king refused to grant it, saying, That Hollis did him better service in the parliament than he could do him at Oxford.

II. That the said Mr. Hollis and sir P. Stapylton, during the said late wars, when the earl of Lindsey went from the Tower of London to Oxford, sent several messages of intelligence to the earl of Dorset and lord Digby; thereby assuring them, that they did better service for the king here in parliament than they could do him if they were at Oxford; and sir P. Stapylton desired that the earl of Dorset would preserve him and his friends in the good opinion of the party at Oxford, which was then the king's garrison, and he would do as much for his lordship and his friends here with the parliament.—And the said Mr. Hollis and sir P. Stapylton, the more to ingratiate themselves into the favour of the enemy, did, of their own accord, without any direction of the parliament, draw up other Propositions than those mentioned in the preceding Articles, which they affirmed were, in their judgments, fit for the king to grant, and for the parliament to desire; and being so drawn up, sent them privately to his majesty, without any authority of parliament to warrant the same.

III. That the said Mr. Hollis, sir P. Stapylton, sir Wm. Lewis, sir J. Clotworthy, sir

Wm. Waller, sir John Maynard, major-general Masie, Mr. Glynn, Mr. Long, colonel Edward Harley, and A. Nicholl, in March, April, May, and June last past, and at other times, in prosecution of the evil designs in the several general Heads mentioned, have frequently assembled and met together at the lady Carlisle's lodgings in Whitehall, and in other places, with divers other persons disaffected to the state, (without any authority of parliament) for holding correspondence with the queen of England now in France, and her participants; with an intent, by such secret and clandestine Treaties amongst themselves, to put conditions upon the parliament, and to bring in the king upon their own terms; and having a great power upon the treasure of this kingdom, have therewith maintained and encouraged, by pensions and otherwise, the queen's party in France, thereby to beget a second and more bloody war in this kingdom: and they, or some, or one of them, assured the queen of 40,000*l.* per annum, if she would assist them in their design; and that they would do more for the king than the army would do; and that they would find out some means to destroy the army and their friends.

IV. That in further pursuance of the same evil designs, the said Mr. Hollis, sir P. Stapylton, sir Wm. Lewis, sir J. Clotworthy, sir Wm. Waller, and major-gen. Massie, by the combination aforesaid, within three months last past, without any authority of parliament, invited the Scots and other foreign forces to come into this kingdom in a hostile manner, to abet and assist them in the prosecuting and effecting of their said designs.—And the said Mr. Hollis very lately sent to the said queen of England, then and still in France, advising her, among other things, speedily to send the Prince into Scotland, to march into this kingdom at the head of an army; and did send a special messenger to her for such ends and purposes.—And the said Mr. Hollis, sir P. Stapylton, sir Wm. Lewis, sir J. Clotworthy, sir Wm. Waller, sir J. Maynard, Mr. Glynn, major-gen. Massie, Mr. Long, col. Edw. Harley, and A. Nicholl, have under-hand, of their own accord, without authority of parliament, listed, or caused or procured to be listed, divers commanders and soldiers, endeavouring thereby to levy and raise a new war in this kingdom, to protect themselves in their unjust oppressions and factious designs; and have, at several times within two months last past, invited, encouraged, abetted, and counselled multitudes of Reformado officers and soldiers, and other rude persons, tumultuously and violently to gather together at Westminster, to affright and assault the members of parliament in their passage to and from the house; to offer violence to the house itself, by locking the door thereof upon them, and so imprisoning them; and, by such violences, outrages, and threats, to awe and enforce the parliament.

V. That the said Mr. Hollis, sir P. Stapylton, and Mr. Glynn, have been, and are, obstru-

ters and prejudgers of several Petitions to the parliament for Redress of public Grievances. And the said Mr. Hollis and sir P. Stapylton, in May last past, did abuse and affront divers petitioners, who, in a peaceable manner, then attended the committee, whereof col. Lee was chairman; not only reviling and reproaching them, but violently haling and boisterously assaulting them, and offered to draw their swords upon major Tuleday and others of the said petitioners; and without any power or authority, committed Nicholas Tew, one of the said petitioners; and, soon afterwards, by the procurement of Mr. Hollis and sir P. Stapylton, and upon their misinformation to the house, the said major Tuleday and Nicholas Tew were imprisoned, not being permitted to speak for themselves. And Mr. Glymme, about three months since, caused the said Tew to be imprisoned in Newgate, and to be detained a long time there, for no other cause but for having a Petition about him which was to be presented to the house.

VI. That the said sir J. Clotworthy, sir W. Waller, and major-gen. Massie, have lately, in prosecution of the said designs, in the said general Heads mentioned, (against the known laws of this realm, and rules and articles of war made by the parliament) by an arbitrary power imprisoned some members of the Army without any authority; particularly ensign Nichols, whose pockets they, without authority, caused to be searched, and several Papers to be taken from him, contrary to the liberty of every subject; and caused him to be sent a prisoner from the head-quarters to London, without the authority or privity of the general, or the chief officers of the army commanding in his absence.

VII. That in or about March last, there being a Petition intended from the officers and Soldiers of the Army to their General, for such things only as were justly due unto them, and concerning them merely as soldiers, the said sir Wm. Waller, sir J. Clotworthy, and col. Edw. Harley, a member of the army, having gotten into their hands a copy of the said Petition, by combination with the other members above-mentioned, and with an intent to abuse the parliament into prejudices and jealousies against the proceedings of the Army concerning the said Petition, (they well knowing that the said Army stood in their way, and hindered them from bringing to pass the designs in the said general Charge expressed) did untruly and maliciously inform the house, That the said Petition was contrived and promoted to debauch and disoblige the Army from the parliament; and that it was managed and carried on by divers principal officers in the Army; that orders were given out for reading of it in the head of every regiment, and whosoever would not subscribe it should be put out of the musters, and cashiered the Army; and, by those and other aggravations, did represent it to the house as a design against the parliament; further adding, That some

regiments, which were remote, were sent for to join with the rest of the Army for that purpose; by which misinformation they did, the same day, procure a peremptory order to the general to suppress the said Petition.

VIII. That, some few days after, col. Ed. Harley, by the combination aforesaid, and in pursuance of the same designs, did produce to the house a letter, supposed to be written from within the quarters of the army to him, by a person not named; whereby it was informed, That col. Harley's lieutenant-col. had drawn his regiment to a rendezvous, and had caused the said Petition to be read at the head of it; and that he threatened to cashier and put out of the musters all that would not subscribe it; and that the design of the Army therein was to enslave the parliament and kingdom, if the parliament proceeded not to some high resolutions, or to that effect, as by the said letter, relation being thereunto had, may appear. And although the substance of the said letter was most untrue, and no author thereof appeared, nor could be produced, although a committee was appointed for examination thereof, and it was much pressed the author should be discovered; yet the said col. Harley, sir J. Clotworthy, and sir Wm. Waller did so avow the reality of the said letter, and that the contents thereof would be made good, as that thereby, and by other false suggestions of theirs against the army, they procured the house (upon long debate, which held till about eight at night) to order, That a committee of five members, whereof the said Mr. Hollis was one, should prepare a declaration to be brought into the house the next morning, signifying the house's dislike of the proceedings of the army upon that petition, as by the said order, dated the 30th of March last, may appear; upon which settling of the said business for that night, most of the members departed, as conceiving nothing would be done thereupon till the next day, and that then they might have a free debate concerning the same; but the house still continuing to sit upon dispatch of some letters formerly ordered, the said Mr. Hollis, by the same combination, and in farther prosecution of the said evil designs, having of himself, without the committee, prepared a declaration against the petition itself, contrary to the intention and direction of the said order, and contrary to the rules of justice and usual course of parliament, did, the same night, about ten of the clock, on purpose to surprise the house, present the same declaration to the house, whereby the said petitioners were, without being heard, declared enemies to the state, and obstructors of the relief of Ireland, if they still persisted therein, as by the same declaration, whereto relation being had, may appear; and did procure it to be then passed accordingly, to the great dishonour of the parliament and their proceedings; to the insufferable injury, the just provocation, discouragement, and discontent of the army; to the trouble and danger of the whole kingdom; to

the hindering of the relief of Ireland, and other the evil consequences in the said general charge expressed.

IX. That by the same and the like false informations and suggestions, the said col. Harley, then a member of the army, sir J. Clotworthy, sir Wm. Waller, and the said other persons, did, shortly after the said declaration so made as aforesaid, procure divers eminent and faithful officers of the army, namely, lieutenant. gen. Hammond, col. Hammond, col. Lilburne, lieutenant. col. Pride, and others, to be sent for from their charges in the army, to appear at the bar of the house, to make answer in relation to the said petition; against whom, when they came thither, they could charge or prove nothing at all; inasmuch as the house thought fit immediately to discharge them. And whereas there was a committee appointed to examine and consider of the truth or falsehood of them, and the said members informing were appointed to produce their proofs and evidence to the same before the committee; though they have since then been often urged, called upon, and demanded to produce their proofs and evidence thereto, if they had any, and have been plainly told, That if they did not proceed effectually to do it, they should be accounted the authors and devisers of the said falsehood, and reparation would accordingly be demanded against them; yet they have not to this day produced any proofs or evidence to any of the said informations or suggestions, whereby the parliament and the army were so much abused as before is declared; nor could they, or any of them, be hitherto persuaded to give into the said committee any charge against the said officers of the army, which they had then or since procured to be sent for as aforesaid; but have held divers of them in a long and chargeable attendance upon the house, without any thing laid to their charge, until the house was pleased to discharge them.

X. That the said Mr. Hollis, sir P. Stapylton, sir Wm. Lewis, sir Wm. Waller, sir J. Clotworthy, and major-general Massie, in further pursuance of the designs mentioned in the general heads charged against them, have been great instruments in the obstructing the relief of Ireland, and, within two months last past, did untruly inform the house, That, by their procurement, there were fifty companies of foot and ten troops of horse of this army engaged for Ireland, upon the terms and under the conduct then by the parliament propounded; and, the more to delude the parliament therein, they, or some of them, by the combination aforesaid, did procure divers officers then in this army, namely, col. Butler, lieutenant. col. Jackson, major Gooday, and others, to let the said members give in the said officers' names, as listing themselves for Ireland on the said terms and conduct propounded; when as those officers did at the same time declare themselves unwilling thereunto, and resolved not to go to serve in Ireland on any terms whatsoever, though they the said members under band

assured them, That though they made use of their names, yet they should not go for the service.—They have likewise untruly informed the house, and given in the names of many considerable officers of this army, namely, capt. Pennyfather and capt. Burges, of col. Butler's regiment, capt. Clarke, and four or more commission officers of sir Hardress Waller's regiment, and others, as having been subscribed for Ireland, who did not so engage or subscribe, nor give any consent thereunto; but did then, and have ever since, utterly disavowed and denied the same.—And about the same time they also reported to the house the name and offer of lieutenant. col. Farrington, as being then lieutenant-colonel of this army, and engaging for himself and his regiment for Ireland; whereas the said Farrington had been cashiered the army a year and a half before. By which, and other their untrue informations and reports of that nature, the parliament was abused and misled into a conceit and confidence of a strength out of the army, then supposed to be engaged and ready for Ireland, on their own terms; when as, in truth, the same was but a mere delusion, and which was so contrived on purpose to occasion a slighting and neglecting of the army, as supposing no further use for them.

XI. Whereas part of three regiments of foot, viz. col. Herbert's, col. Kemp's and col. Graye's, were, by order of the house, advanced towards the relief of Ireland, as far as Bromesgrove, in the county of Worcester; the said sir P. Stapylton, Mr. Hollis, sir J. Clotworthy, sir Wm. Lewis, major. gen. Massie, sir Wm. Waller, and Mr. Glynne, by combination aforesaid, did, of their own accord, without the knowledge or direction of the house, on the 6th of June last, (being Sabbath-day, and without summoning a committee) command those forces back again as far as Reading, with an evil intent to draw forces together to beget a new war in England.

XII. That the said sir J. Clotworthy, in prosecution of the designs in the said general charge expressed, hath, in the years 1642, 1643, 1644, and since, converted several great sums of money (which, by several orders of parliament, and of the Irish committee, were designed for the relief of Ireland, to his own particular use, namely, the sum of 280*l*. which, by order of both houses, dated 11th of Feb. 1642, was to be paid for 20 butts of sack for Ireland; 700*l*. which the same day was also ordered for 2,000 swords; 300*l*. which by order of the said Irish committee, dated the 5th of April 1643, was designed for 120 pair of pistols; and divers other sums of money, upon several Orders, which he, from time to time, received for the use and relief of Ireland; but were not employed to the uses by the said orders intended and directed, but to his own private use as aforesaid: and that he hath, within two years last past, received several sums of money, arms, and other provisions for a troop of horse, which he pretended he had

raised in Ireland; whereas he had not, nor did raise or furnish any such troop as he pretended. And that he, for Money and other rewards, hath preferred John Davis, William Summers, and others, to be intrusted with the Irish affairs, who have kept correspondency with the enemy, and have defrauded the state of other great sums of money; and he hath been privy to, and a sharer in, such their actions.

XIII. That, about November last past, the said sir J. Clotworthy being, by the parliament, sent a commissioner, with others, into Ireland, who all had a joint power and authority to treat with the earl of Ormond for the space of four days, and no more; he, contrary to the special trust reposed in him, held secret intelligence with the said earl, by cypher or character, without the consent or knowledge of those others in commission with him, many weeks after the time so limited was expired; and about the same time he held the like secret intelligence with the lord George Digby, then in Ireland, beyond the time prefixed, and without the consent of the said other commissioners; and, in order thereunto, the lords Ormond and Digby lately employed one Slingsby, who pretends a design about the Prince, to come into this kingdom.

XIV. That the said sir J. Clotworthy, Mr. Hollis, and sir P. Stapylton, by combination with the rest of the members before-named, in further prosecution of the designs mentioned in the same, well knowing that the lord Lisle, late president of Ireland, was both faithful and vigilant while he was trusted in the same kingdom, and had now this last spring made provisions ready to march into the field; and that the lord baron of Broghill, general of the parliament's horse in Munster, and col. sir Arthur Loftus, persons of honour and reputation, and of great fortunes in the said kingdom, lately came purposely into this kingdom to exhibit, and did exhibit, many Articles of High Treason against the lord Inchiquin, for betraying the parliament's army to the enemy, as formerly he had done; yet, by the great power and violent interposition of the said sir J. Clotworthy, Mr. Hollis, and sir P. Stapylton, by the practice and combination aforesaid, the said Articles have been obstructed, and the business not suffered to come to a hearing, and the said lord Lisle hastily called out of Ireland, and the power and command of the parliament's forces in that kingdom committed to the said lord of Inchiquin, to the loss of this summer's service, and the expence of much treasure to make new preparations of war. And whereas the said lord Lisle, being so suddenly called from thence as aforesaid, did design and depute sir Hardress Waller, knight, major-general of the forces there, a man of known integrity and courage both for his service in England and in Ireland, and of considerable fortune there, to take care of the said lord Lisle's forces till the pleasure of the parliament might be farther known, the said lord Inchiquin,

upon the receipt of a letter from the said sir J. Clotworthy, Mr. Hollis, and sir P. Stapylton, or one of them, or from some other person by their, or one of their, direction, privy, or procurement, did express that he had an order or direction from London that no man that favoured the Independents (under which name the said lord of Inchiquin hath comprehended all men that have shewed themselves opposite to tyranny and arbitrary government) should have any trust or command there; way, though they were of another judgment, yet if they would not prosecute the Independents, they should not be employed there, or words to that effect; and, under colour thereof, the said sir H. Waller, and all others that formerly had held their commissions from the said lord Lisle while he commanded, were displaced, to the discouragement of those and other faithful persons to the parliament, and to the great disservice and danger of losing that kingdom.

XV. That whereas a committee of the house of commons hath been lately appointed by the parliament, to consider of Propositions for the settling and preservation of Wales, whereof the said sir Wm. Lewis and Mr. Glynn were and are members, and to report the same to the house; they, the said sir Wm. Lewis and Mr. Glynn, with others of the said committee, did, on the 30th of April now last past, without any authority of parliament, before any report made to the house, of their own accord (instead of settling and preserving Wales) order that all committees for sequestration should forbear all proceedings of sequestration against all, or any, of the inhabitants of Wales; and although some few persons were upon general heads excepted, yet, by virtue of that illegal order, all the commissioners of the peace and commissioners of associations, who were as active in raising money and pressing men to serve against the parliament as any others; all the commissioners of array, that did or should at any time come in and submit to the parliament, or their commanders in chief, without any limitation of time; all that had borne arms against the parliament, unless they were governors, and other officers of war, that held out some town, castle, or fort against the parliament; all disaffected and scandalous ministers, though in their sermons they usually reviled and scandalized the parliament and their proceedings, calling them rebels and traitors, and not only incensing the people against the parliament, but usually taking up arms, and leading their parishioners in arms upon any alarm against the parliament; and many other desperate delinquents, have been, and still are, taken off and freed from sequestration; and the said order was sent to every committee in Wales in several letters, contrary to several orders and ordinances of parliament, and contrary to the rules of justice and equity, which should impartially be administered as well in Wales as in other places of this kingdom; whereby the ill-affected gentry and ministry of that country are grown so high and

insolent, that honest men dare scarce live amongst them; so as that which was intended by the parliament, to settle and preserve Wales, is, by the practice of the said sir Wm. Lewis and Mr. Glynn, perverted to the danger and destruction of it.

XVI. That the said sir Wm. Lewis and Mr. Glynn, have further ingratiated themselves with the delinquents of Wales, and prepared them for their said designs in manner following. viz. He the said sir William Lewis hath, within two years last past, countenanced and protected many of the most notorious and dangerous delinquents within the several counties of South-Wales; namely, the lord Carbery and others in Caermarthenshire; Mr. Carew, and others in Glamorganshire; Mr. Morgan, late knight of the shire, Mr. John Herbert, and others in Brecknockshire; Mr. Gwyn, Mr. Lewis, and divers others in Radnorshire; by freeing some of them altogether from compositions, though sequestered; by labouring with divers members of the house and of committees to be favourable in compounding with others, and to admit of such to their compositions as were incapable thereof; and he hath animated and encouraged some of the said persons to continue their fidelity to the king's cause, promising them, that if they would engage their friends with the king for him, he and his would be their friends in the parliament; in so much as his friends, the delinquents in those parts, have lately looked upon him as a rising man when the king shall come to London; which hath lately been their constant boasting. And the said sir Wm. Lewis hath, within two years last past, caused divers that had been commissioners for the king, and pressed men and raised money to promote the late war against the parliament, namely, his brother, Mr. Tho. Lewis, Mr. Gwyn, Mr. C. Walwyn, Mr. Meredith Lewis, Mr. Edw. Williams, and many others, to be commissioners of the peace, and also committee-men for the said county of Brecknock; in so much as those that have been most active and faithful to the parliament, have been, and still are, out-voted in those places, and can do no considerable service for the parliament; and the rather for that he hath also procured one Edw. Williams, his own kinsman, and one much disaffected to the parliament to be solicitor of sequestrations in the said county, who is, and hath been, very remiss and corrupt therein. And the said sir Wm. Lewis hath, by the means aforesaid, lately procured Mr. Edw. Lewis, his son, though unfit for that employment, to be chosen and returned burress for Brecknock; which that he might the better effect, he kept the writ for election of the said burress above eight months in his own custody before it was delivered to the sheriff of the said county. And likewise that the said Mr. John Glynn, within two years last past, hath procured several persons, that have lately been commissioners of array, and in arms against the parliament in North-Wales, to be named in the commis-

sions of the peace for the counties of Denbigh and Caernarvon, and other counties there, and to be put in other great places of trust and command there; and, amongst others, col. Glynn, his brother, who was lately a colonel in the king's army, is, by his procurement, become governor of the town and Castle of Caernarvon, and admiral or vice-admiral of the Irish seas; to the endangering of those counties lying upon the coasts towards Ireland, and to the tear and discouragement of the well-affected inhabitants of those places.

XVII. That the said sir Wm. Lewis, being heretofore, during these troubles, governor of Portsmouth, a garrison for the parliament, (in which time he received much of the public treasure, for which he hath not yet given an account) did, while he was governor there, frequently hold correspondence and intelligence with the king's party, about the delivery up of the said garrison; in so much as, although sir Wm. Waller, and divers others in that garrison, were proclaimed traitors to the king, yet he, by the king's special command, was spared; the king affirming he was his friend, and that he was confident he would do him good service, or to that effect: and although he then was a parliament man and governor of Portsmouth as aforesaid, and was three years in the king's quarters, yet his estate in the county of Brecon, being of the value of above 600*l.* per annum, was never sequestered. And since the parliament hath prevailed, col. Herbert Price, (having been governor of Brecknock for the king against the parliament) being sequestered, the said sir Wm. Lewis, by his solicitations to the committee, procured the personal estate of the said colonel Price (which the committee of the county had found out, and caused to be brought to Morgan Aubrey's house in Brecon) to be restored unto him without any satisfaction to the state; and hath caused the said colonel Price's lands in the said county of Brecon, being worth about 300*l.* per annum, to be lett to a friend of the said colonel Price, to his wife's use, at 50*l.* per annum, contrary to the directions of several ordinances of parliament made in that behalf.

XVIII. That the said Mr. J. Glynn, or some other person or persons by his direction, consent, or privy, or to his use, hath, during his being a member of the house of Commons, taken rewards of several persons for services done them in the house; as namely, amongst others, divers drovers from Wales, who, by his means and procurement, had an allowance by order of the house, for 3,000*l.* in satisfaction of losses they had sustained by the enemy, and did pay unto the wife of the said Mr. Glynn the sum of 100*l.* as a reward for his said service.

XIX. That the said Mr. John Glynn, as he hath been most active to bring into the commissions of Peace, and into other places of authority, divers notorious delinquents in North-Wales as aforesaid, so he hath been as active, as much as in him lies, to put out and keep out

of the militia and common council of the city of London, and out of the commission of the peace for Middlesex, many eminent and faithful men that have laid out their estates, and adventured their lives for the defence of the parliament and city in the time of their greatest necessity; namely, alderman Pennington, col. Tibborne, Mr. Fastwick, Mr. Moyer, and others, contrary to the Declaration of both kingdoms: which hath assured all lawful favour and encouragement to those that have been faithful, and shall so continue, to the parliament; which doings must needs tend to the giving a fresh occasion and power to the enemy against the parliament's best friends, to the dishonour of the parliament, and the endangering of the kingdom.

XX. That the said sir P. Stapylton, Mr. Hollis, and sir Wm. Lewis, have, by their power and countenance, as members of the house of commons, both jointly and severally, used means to obstruct the course of justice, and have interposed themselves in several causes, and by word of mouth, moved and persuaded judges and other officers on the behalf of such as they conceive to be their friends; amongst others, in the great cause that was lately depending in the house of lords, between alderman Langham and captain Lymery, when counsel was met for the pleading thereof, they did repair to the earl of Rutland about the same; and the said sir P. Stapylton told him that they were fully satisfied concerning the justness of Langham's cause, and therefore, as the said earl did respect them, he should give his vote for Langham, or used words to that effect; which also was seconded by the said Mr. Hollis in words, and agreed unto by the said sir Wm. Lewis, as appeared by his presence and gesture; and the said sir Wm. Lewis did exercise the same power in a cause of John Gunter and others.

XXI. That the said Mr. Anthony Nicholl, although, about four years since, he was, by the committee of privileges, voted not a fit member to sit in the house, by reason his election was void; yet the said Mr. Nicholl doth not only sit and vote there as a member, but, by his power and threats in the West countries, and by his solicitations and indirect practices, hath brought in, or procured to be brought in, about 28 members more out of Cornwall, on purpose to carry on the designs and practices before-mentioned, and to make a faction in the said house; and, notwithstanding the Self-denying Ordinance, he doth still hold a place in the Tower, formerly conferred upon him by the house, and receiveth the profits thereof to his own use.

XXII. That the said Mr. Nicholl hath, since his sitting in the house as aforesaid, taken rewards for service done there; namely, whereas sir Wm. Uvedall, knight, for deserting the parliament, and going to York with the king, was suspended the house; he, for the sum of 100*l.* or 150*l.* paid unto him, or to his use, did, by misinformations to the house, procure the said

sir Wm. Uvedall to be re-admitted a member. And the said Mr. Nicholl, while he was a member of the Committee for Safety, he and others of the said committee having issued forth a warrant for searching Greenwich-House, did, underhand, acquaint one of the queen's officers therewith; and thereby prevented the design of the said committee, to the great disservice of the parliament and kingdom.

XXIII. That the said Mr. Long, at the beginning of the late wars, not having courage sufficient to perform his duty in military affairs, did, out of covetousness, or other unworthy ends, procure a command of a troop of horse under his excellency the late lord-general the earl of Essex; but whenever his said troop came upon any service, he, out of fear or treachery, unworthily absented himself, and never was seen or known to charge the enemy in person, though his troop often engaged; namely, at the Battle of Edgehill, when he saw there were like to be blows, he left the field, and never charged before his troop; and at the battle or fight at Brentford, though his troop was there, yet he staid at London till the danger was past and fighting done; And when his troop was sent into the West, he took no other notice of it, but to receive his pay; and in the mean while he repaired into the county of Essex, and procured a commission to be a colonel of horse, and, instead of fighting against the parliament's enemies, he betook himself to plunder and oppress the parliament's friends there; and, contrary to order, and without any authority, or exigencies of war compelling him thereunto, enforced great sums of money, and many horses and other provisions from the country: namely, from Mr. Tho. Mauwood, a man well affected, who had the General's protection, and whose horses were taken from the plough, and others; to the great losses and oppression of the people, and to the great dishonour of the parliament, whose service he nevertheless neglected, and hath not hitherto given an account of the great sums of money and other things that he so exacted from the country as aforesaid.

XXIV. That the said Mr. Long afterwards, upon pretence of some losses sustained by the enemy, and some great service he had done for the state, did procure of the house a great office in the Chancery; namely, to be the chief Register of that court, wherein his skill was little, and whereof he was, and still is, altogether incapable; and although for a time, upon the Self-denying Ordinance, he was displaced, yet, upon the motion, or by the power and means of the said Mr. Hollis, he hath obtained the said office again; to the great prejudice of skilful clerks that have been bred up in the said court, to the disservice of the commonwealth, and the dishonour of the house.

XXV. The said Mr. Long, on purpose to drive on the designs in the said several Charges expressed, hath for two years last past, usually pressed and urged several members to give their Votes such ways as he pleased; and to that

end and purpose, doth constantly place himself near the door of the house; and, when any debate is concerning any design wherein his party is engaged, he hath used such tamperings and violence to such of his own party as would go out of the house, and hath persuaded them to continue there for their votes; and he, in case any such have gone out of the house, hath been very inquisitive where they might be found, that so he may go for them when the business in debate comes near to be put to the vote; and, when they come not according to his expectation, doth ordinarily and speedily run out of the house himself to call them and drive them in again, so that he hath been commonly called (by those that are without the house and have taken notice of his actions), the Parliament Driver; whereby the freedom of the members is taken from them, the manner of the parliament's proceedings much scandalized, and many times evil and dangerous designs drove on in a faction by votes, to the great prejudice of the common-wealth.—All which matters and things the said Army will be ready, in convenient time, to make good, by proof upon oath, as this honourable house shall direct. And for that by reason of the straitness of time, and other more weighty affairs of the Army, they could not so fully finish and accomplish the said Articles; therefore the said Army still reserve further liberty to add other Articles against the said Members, or any of them, at any time before their trial, as occasion shall serve.

By Appointment of his excellency sir Thomas Fairfax, and the Council of War. Jo. RUSWORTH, Secretary.\*

\* Besides the general motives to this transaction of the Army (arising from its being at this time guided entirely by Cromwell and the Independent party, as the house of Commons, through the influence of these Members, was by the Presbyterian) there were not wanting private resentments among particulars: For lord Clarendon writes, "That Mr. Hollis had one day, upon a very hot debate in the house, and some rude expressions which fell from commissary Ireton, persuaded him to walk out of the house with him, and then told him, 'That he should presently go over the water and fight with him.' The commissary replying 'His conscience would not suffer him to fight a duel,' Mr. Hollis, in choler, pulled him by the nose; telling him, 'If his conscience would keep him from giving men satisfaction, it should keep him from provoking them.' His lordship adds, "This affront to the third person of the Army, and to a man of the most virulent, malicious, and revengeful nature of all the pack, so incensed the whole party, that they were resolved, one way or other, to be rid of him, who had that power in the house, and that reputation abroad, that when he could not absolutely controul their designs, he did so obstruct them that they could not advance to any conclusion." This anecdote is, in some measure, confirmed by

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July 9. Ordered, That the Charge of the Army shall be debated to morrow morning the first business, and nothing to intervene.

July 10. The House this day again read the particular Charge against the Eleven Members, and had a large debate thereupon, forenoon and afternoon, but came to no conclusion, referring the further debate till Monday next.

July 12. The House of Commons (as was ordered) further proceeded in the debate of the Particular Charge against the Eleven Members, and upon the result of all, they voted it a Charge, and that the said Eleven Members should give in their Answer thereunto by Monday next, at which time the house will consider of putting the same into some speedy way of trial, as is desired.

The House ordered, that Master Chute, Mr. Prynne, Master Glover, Mr. Hales, shall be Council for the accused Eleven Members of the House, that were included in the late Votes of adhering to the King's Party, were ordered to present their cases to the house on this day; but by reason of other extraordinary occasions, the house ordered the Cases of those Members should be read and debated on to morrow morning.

ANSWER of the Eleven Members impeached by the Army.

July 19. This day the Eleven Members, impeached by the Army, delivered to the House of Commons their Answer to the Charge against them, which was read the first time in their presence; and then, they having of themselves withdrawn, the said Answer was read a second time; as follows:

A full VINDICATION and ANSWER of the Eleven accused Members to a late printed Pamphlet, intitled, 'A particular Charge

the authority of the Commons Journals; wherein we find "That the house having been informed that some matters of difference had happened between Mr. Hollis and commissary Ireton, the Speaker, by command, laid an injunction upon them not to proceed any further thereupon." Commons Journal, April 2, 1647.

An anonymous Writer of these times † frequently quoted by lord Hollis in his Memoirs, informs us "That Cromwell confessed he had nothing against sir John Maynard, another of the impeached Members, but that he was put up amongst the rest, because he was a busy man against the lieutenant-general and his faction."

† "The Grand Design; or a Discovery of that Form of Slavery intended and in part brought upon the free People of England, by a powerful Party in the Parliament, and Licut. Gen. Cromwell, Commissary-General Ireton, and others of that Faction in the Army, tending to the utter Ruin and Enslaving of the whole Nation. Written by Sirrahuiho, not an invective, but moderate and impartial, Observer of the Transactions of Parliament and Army. Printed in the last Year of England's Slavery. 1647."

or Impeachment, in the name of sir Thomas Fairfax and the Army under his command, by his appointment and the Council of War.'

"Although we be not ignorant of the illegality and insufficiency of that which is printed and published for our Charge, seeming unto us, for the greatest part thereof, rather an arraignment of the proceedings of the house of commons, as supposing them to be acted and carried on in a design, by the interest and prevalency of the persons charged; and that all the particulars mentioned in this Charge should be, by them, committed and done in pursuance of that design; a thing so contrary to the nature, and derogatory to the honour, of a free parliament, and of a dangerous consequence, to render all suspected and invalid which this parliament hath done or shall do: and that this Charge is brought in the name of an Army, and so is an accusation enforced by power, contrary to the statute of 31 Hen. 6, c. 1, and no accuser appearing liable to satisfy the parties grieved for their damages and expences, if the accusation prove false and untrue, (as this most certainly is) against the tenor of several statutes made in that behalf: Nor is it unknown that many indirect and unjustifiable ways have been practised in providing the materials of this Charge, by tampering with persons to become our accusers; setting general inquisitions upon some of us, who have faithfully served our country, (most of us for the space of near seven years in that house, and the rest of us the time of our being members) to the wasting of our estates, prejudice of our healths, and many inconveniencies to our persons by much travel and labour, without those advantages by way of gift or otherwise, which some of our accusers, and divers others, have had, for which we bear them no envy at all; yet books have been searched, proceedings at committees viewed, the king's and Digby's cabinets and private papers (of which our accusers had the maidenhead) searched for intelligence, yet not one syllable found against us in them; servants and attendants examined to rake up matter against us (an absolute breach of privilege of parliament, and not well consisting with the liberty of the subject): all this notwithstanding, which we might very well take exceptions at, and besides that we now lie under that great disadvantage which the philosopher did, who disputed with the Emperor who commanded thirty legions, so that all his arguments were too weak, nor could he make use of that strength of reason and truth which his cause did afford; yet we, presuming upon our innocence and the justice of those who must judge us, but principally upon the goodness of the great God, who is the support and avenger of the oppressed, and hath protected, for several years, some of us, when we have been the

object of malice and power, and marks set up to be shot at for destruction; to which purpose our actions, speeches, and our private conversations have been, as narrowly as could be, observed and inquired into; prisoners, discontented persons, friends and foes, examined upon us; all manner of persons dealt with, that could be imagined willing to betray, and able to say any thing against us, yet God having preserved us, as he did David from the bear and lion, which encouraged him likewise to promise himself deliverance from the uncircumcised Philistine, though so much more mighty than he; in like manner we trust for his assistance and protection at this time, and shall apply ourselves to the particulars insisted upon, and not formerly cleared and discharged upon a strict examination and debate in parliament; and shall give, we doubt not, a satisfactory account of our integrity and innocence in them all, in order as they lie.—

The first Article of the Charge, which concerns Mr. Hollis singly, is partly of 'Passages at Oxford about three years since.' With these he cannot undertake to charge his memory at this time, to give particular and positive Answers thereunto; but he saith, There is no new matter at all in this Charge, and that the whole business received a full and perfect disquisition in the house of commons, in July, 1645, now two years past; when, as near as he could remember, of all done and said by him concerning the particulars, then and now laid to his charge, he gave an account, together with another gentleman, a very worthy member of the house, and his fellow-commissioner at Oxford,\* who was then accused by the lord Saville to have joined with Mr. Hollis in all the parts of this Charge; and the house was so fully satisfied of their good intentions in their transaction of that business, that, after a very long debate of several days, they ordered it, upon the question, the 19th day of that July, 'That the matter of the report' (which was this whole business now endeavoured to be revived in this Charge) 'should be totally and finally laid aside.'—As for the particular Answers which he gave in the vindication of his innocency, asserting the truth, and discovering the malice and falshood of him then accuser, the lord Saville, he refers himself to the public Examinations, Proceedings, and Resolutions in the house, and what was then and there delivered, both by him and the other gentleman together with him, at that time most falsely accused by the lord Saville; who hath since so far bethought himself, and testified a remorse for the injury he then did unto these two gentlemen, that it is not very long since he sent a person of honour, a peer of the realm, unto Mr. Hollis, assuring him, 'That when his composition was once made

\* 13 Edw. 1. c. 13. 25 Edw. 3. c. 4. 27 Edw. 3. c. 2. 38 Edw. 3. c. 9. 17 Rich. 2. c. 6. 15 Henry 6. c. 4. Notes in the Original.

\* Mr. Whitelocke, in whose Memorials, p. 148, et ultra, as also in lord Hollis's Memoirs, p. 38, the reader will find an ample Account of this business.

and perfected,' (for this was at the time that the lord Saville was upon compounding for his delinquency) 'he would then discover unto him,' meaning Mr. Hollis, 'how that whole business was laid against him, and who they were that laid it; which when he knew, he would see he had no cause to be so angry with him; and therefore desired him not to be against him in setting the fine for his composition.' Adding withal, 'He durst not discover it till he was out of their danger,' meaning those who had laid that design against Mr. Hollis; 'for if they had the least inckling of it, they would certainly ruin him.' This was the substance, and, as near as can be remembered, the very words, which were delivered unto Mr. Hollis by that lord, in the name of the lord Saville, and from him. But Mr. Hollis was so far from being vindictive against those who had expressed so much malice against him, and endeavoured his ruin, as he wholly put it out of his thoughts, never so much as sending to the lord Saville after his composition was past; in the making whereof he did him no disservice at all, as in truth scorning it.—Another clause in the first Article is concerning a 'Letter sent from the earl of Lindsey unto Mr. Hollis, containing,' as is laid in the Charge, 'some secret Design.' This was likewise examined in the house, and by Mr. Hollis himself first discovered unto the house, contrary to what is in the printed Paper most falsely suggested, and this done by him as soon as it came into his mind; for when he received it, which was very late one evening by a servant of lord Saville's, he immediately after fell sick, which made him cleave forget it; nor doth he know what became of the Paper, whether or no he burnt it; The contents of it were only one line, a recommendation of the bearer from the lord Saville, the very words whereof were then fresh in his memory, and by him repeated in the house; when such satisfaction was given, as that there passed a Vote the 19th of July 1645, 'That the receiving of that Note in the manner Mr. Hollis did, was no holding intelligence with the enemy.'—There is another part of this first Article, 'of the earl of Lindsey's moving for a Pass for Mr. Hollis to go to Oxford;' and the king's saying, 'He did him better service in the parliament than he could do there,' which was likewise, by the lord Saville, informed to the committee appointed for the examination of that business, and so reported to the house; at which time Mr. Hollis said, and still doth, That he knew nothing of it, and was, and is, most confident that it is most false; for that he never signified any such desire to the earl of Lindsey, or to any body else, nor ever had it in his thoughts.

To the second Article, which charges Mr. Hollis and sir P. Stapylton, jointly, with 'sending several messages to the earl of Dorset and lord Digby,' and sir P. Stapylton singly 'to have sent one to the earl of Dorset;' and then both Mr. Hollis and sir P. Stapylton to have 'joined in drawing Propositions, and

sending them privately to his majesty; they both of them say, for what concerns both, and sir P. Stapylton, for what concerns himself, (this being the only thing in all the Charge that is singly objected against him) That the whole Article is false and untrue in all and every part of it.

The third Article lays a Charge on the 11 Members jointly, 'for meeting together at lady Carlisle's lodgings, in Whitehall, and other places, with other disaffected persons; for holding correspondency with the queen, to put conditions upon the parliament, to bring in the king upon their own terms; and do such other things, in prosecution of their evil designs,' as are in that Article mentioned. To all and every branch whereof they do all jointly, and each of them severally, give a full, positive, and absolute denial; and affirm, That the whole Charge in that Article is scandalous and false in matter and form. Most of them declare, That within the time there limited for those meetings to have been, and at no time before or since, they have at all been at her ladyship's lodgings; only Mr. Hollis, sir Wm. Lewis, and sir P. Stapylton do acknowledge that, by her ladyship's favour, they have many times waited upon her, both at her own lodgings in Whitehall, and elsewhere, yet never to any such intent and purpose, as is in the Article most falsely suggested; but only to pay unto her ladyship that respect which is due unto her (a person of so great honour and desert) from them, and in truth from all others who are well-wishers to the welfare of this kingdom.—And whereas it is said, 'That they had a great power upon the treasure of this kingdom, and thereby maintained the Queen's Party; assured her a pension and undertook to do more for the king than the Army would do,' who it seems are now ambitious in out-stripping all others in acting for his majesty: it is very well known that these persons have not all meddled in money businesses; have had least to do with disposing of the public treasure, and therefore could not please others with it; and least of all have they received any part of it for their private uses, some of them having declared themselves in the house, when the house was pleased to vote them considerable sums in recompence for their very great sufferings for the commonwealth, That they would receive nothing till the public debts were paid; and none of them are the men that have grown great in these calamitous times, and been enriched upon the ruin of others, nor preferred themselves and their friends to higher fortunes than otherwise they could ever have aspired unto; therefore there is neither truth, nor semblance of truth, that they should be guilty of engaging the public treasure and stock, as the Article charges; nor would any have believed them if they had been so false and foolish as to have offered it. In conclusion they say, The whole Charge in this Article is utterly false.

The fourth Article, which chargeth Mr. Hollis, sir P. Stapylton, sir Wm. Lewis, sir J. Clotworthy, sir Wm. Waller, and major-general Massey, to have, 'within the space of three months last past, invited the Scots, and other foreign forces to enter this kingdom,' is by them averred to be utterly false; as likewise that part of it which charges Mr. Hollis to have 'sent unto the Queen, to advise her to send the Prince into Scotland, to come into this kingdom at the head of an army,' is by him declared to be most untrue, and a mere invention of malice against him. And, in the last place, where it chargeth the 11 Members, 'to have listed, or caused to be listed, divers commanders and soldiers without authority of parliament, and to have encouraged them to make officers and soldiers to gather together tumultuously at Westminster, to affright and assault the members of parliament,' there is nothing of truth in it, and reflects more upon their accusers than on them.

To the fifth Article, which charges Mr. Hollis, sir Philip Stapylton, and Mr. Glynn, to have 'been obstructers of Petitions to the parliament for Redress of public Grievances,' they say, That what hath been done by them, or any of them, in matters of petitions, was done in the house of commons, and only there; where they have, upon occasion, delivered their opinions concerning some seditious petitions, which they suppose to be the petitions intended by the Article. And for what is said of Mr. Hollis and sir P. Stapylton's 'affronting some Petitioners attending a committee, as major Tuleday, and committing Nicholas Tew without authority,' they do say, That Tuleday and Tew affronted the committee; that Tew endeavoured to raise a tumult in the Court of Requests, to the disturbance and danger of the committee; whereupon the committee thought fit to restrain him until the next morning, when they would acquaint the house with it: that all, both concerning him and Tuleday, was reported unto the house, and both of them were, by the house, committed upon just reasons, and afterwards both of them discharged or tailed; the one upon the motion of Mr. Hollis, and the other of sir P. Stapylton.—And whereas it is said, 'That they were not permitted to speak for themselves,' it is notoriously untrue, for Tuleday was heard at the bar of the house of commons, and Tew was heard at the committee as long as he would speak, until he refused to answer any more questions, saying, He was not bound to accuse himself.—In the last place, where Mr. Glynn is charged 'to have committed Tew to Newgate,' for 'no other cause but for having a Petition about him, which was to be presented to the house,' Mr. Glynn doth answer, That being Recorder of London, and in the commission of the pence, he knows it not to be a crime to send such persons to the gaol, as he brought before him for misdemeanors, and may have committed Tew, as he hath done many others; but he doth believe it to be a mistake in the

accusers, not remembering any such thing, and doth boldly affirm, That if he did commit him, it was not for the cause laid down in the Article, but upon just grounds of law.

To the sixth Article, touching 'the Imprisonment of ensign Nichols by sir Wm. Waller, sir J. Clotworthy, and major-general Massey,' they answer, That they, being, by Instructions of the 9th of April, 1647, from the committee at Derby-House, for the affairs of Ireland, authorized to draw off from the rest of the army such as should accept of the service of Ireland, and quarter them in such places as they should think fit, upon the engagements of divers officers of col. Lilburne's regiment to go for Ireland, they gave orders to lieutenant col. Kempson to march with such soldiers of that regiment as should engage for Ireland, to Evesham; and the soldiers so engaging separated from the army; and, on their march towards Evesham, they, on the 24th of April, 1647, at Saffron-Walden, after the general's departure towards London, having received several informations that ensign Nichols (ensign to capt. Dormer, one of the captains of the said regiment) repaired into the quarters of those forces drawn off from the army, in order to the service of Ireland, there dissuading the soldiers to go for Ireland; encouraging them mutinously to demand their pay of the said captain Dormer, and then, by falsehoods and cunning practices, endeavouring to entice them back to the army; undervaluing those that went for Ireland, and incensing them against the Propositions of parliament for that service; and also reading to the said soldiers the Petition of the army, after the same was then lately prohibited by both houses of parliament; and being certified that, for those miscarriages, the said captain Dormer had secured his person till further order, the lords and commons, who were commissioners, did thereupon, on the said 24th of April, give directions to lieutenant col. Kempson to take order that the said ensign Nichols should be sent up to London, with the first opportunity, to be disposed of by the committee of lords and commons for the affairs of Ireland at Derby-House, which was accordingly done; and, upon the report of the business, the said cause was committed by order of the house of commons, and the persons that brought him rewarded for their service therein: in all which proceedings they know of nothing done, but what their duty and instructions, in relation to the service of Ireland, required at their hands, being contrary neither to the laws of the land nor articles of war; but conceive, upon these informations, (ready to be produced and testified upon oath) that the said ensign, according to the martial law, for his said offences, deserved death for endeavouring a mutiny as abovesaid: and therefore there is no cause for the army to complain, in that the house was so merciful to him as to remit that punishment. Whereas it is charged, 'That the pockets of ensign Nichols were searched, and divers Papers taken from him; and' a

'he was sent a prisoner to London from the head-quarters, without the authority or privacy of the general,' they say. That no order was given by them for searching his pockets, or taking away his papers; and believe no such thing was done: that he was secured by capt. Dormer, being found in the quarters of those forces that were drawn off for Ireland, actually endeavouring to put the soldiers into a distemper, and so to withdraw them from that service; and was sent from those quarters (not the head-quarters, as is falsely suggested) to London. And for the privacy or authority of the General, if he had been then present, they conceive their authority from the parliament, on that behalf, was sufficient without the General's; and, as the case stood, they thought it not reasonable to consult the army in the matter of disturbing the Irish service, when they had there found so little encouragement before.

To the seventh Article, sir Wm. Waller, sir J. Clotworthy, and col. Harley, say, They are very sensible the particulars charged in the seventh Article do specially relate to things said or done in the house of commons; and so not liable to any censure, having passed the approbation of that house, which hath already acquitted them, by their Votes of the 25th of June, from all things done and spoken by them in this house, contained in this and the three ensuing Articles; and so ought not to have been recited in this Charge; yet to vindicate themselves from the scandal of design and combination against the Army, they shall give this true account of what induced them to endeavour the suppressing of that Petition:—Sir Wm. Waller and sir J. Clotworthy, being commissioners of parliament with the army for the service of Ireland, and col. Harley being there to attend the same service. March 23, 1646, at a convention of officers for the service of Ireland at Walden, the Petition was produced, as the Petition of the Soldiers, to be approved by the officers there; and was pressed with such eagerness, that an officer of quality offering some reasons against it, was told, He deserved not to live in an army; they taking notice of the subtle and violent managing of that Petition, pretended to be the Petition of the Soldiers, but in truth framed then, as they can prove, by some officers at Walden, at a time when the parliament only proposed the service of Ireland, and the soldiery had neither disposition nor cause to petition; the army being well paid for several months then past, especially the foot, consisting much of recruits, had little cause to complain for pay; thereupon they represented this information to the General, as that which required his care to suppress timely. But after they returned to London, they received several informations, of which they have good proof, that the Petition was agitated in several regiments, and proposed by the officers to their soldiers: that some officers threatened that those who did refuse to subscribe it should be cashiered; and directions were given to return the subscriptions to some

principal officers at the head-quarters. What passed in the house of commons, they presume not to relate without the leave of the house; but by these particulars, which are ready to be attested by persons of worth, the design of raising jealousies between the parliament and army, will really be fixed upon those who have falsely imposed it on the accused Members, to carry on their own designs, which are since more visible.

To the eighth Article, whereas col. Harley is charged, 'That, by combination, he produced to this house a Letter which could not be made good,' he affirms, He did acquaint the house with a Letter received as he was coming to the house, and sent to him from an officer of worth in the Army, who was and is ready to justify the substance of the Letter to be most true, That lieut. col. Pride\* drew col. Harley's regiment to a rendezvous, read the Petition in the head of his company, and that the Petition was then subscribed by most of the regiment; and that lieut. col. Pride said, 'Such as would not subscribe the Petition should be cashiered.'† That in this, colonel Harley did nothing but his duty, and what the house of commons approved by their public thanks to him and another worthy member, an officer of the army, who produced another Letter concerning the same business.—For that which is laid to Mr. Hollis's charge in this Article, concerning the drawing of that Declaration, he answers, That it was done in the house; and the house did allow of, pass it, and afterwards sent it up to the house of peers, where it was likewise past; and that any should question it, being become and made the act of both houses, and so a Charge rather against them than himself, seems strange unto him, whose part in it was only to draw up that Declaration according to the sense of the house, in obedience to a general call upon him for it, being exceedingly pressed and urged to do it, when himself was very unwilling to take that task upon him.

To the ninth Article, wherein it is said, 'That col. Harley, sir J. Clotworthy, sir Wm. Waller, and the said other persons, did procure divers eminent and faithful officers of the army, viz. lieut. gen. Hammond, colonel Lilburne, lieut. col. Pride, and others, to be sent for to appear at the bar of the house, against whom they could charge nothing at all; inasmuch that the house thought fit immediately to discharge them,' it is answered, That the said colonel Harley, sir J. Clotworthy, and sir Wm. Waller, having been informed that those who stile themselves such eminent and faithful persons of the army, with some others, being very active in promoting the Petition mentioned in the former Articles, did, in discharge of their duty, faithfully represent

\* Afterwards made a colonel.

† This is Liberty of Conscience so much professed and contested for by the Army. Notes in the original.

to the house what they had heard; and whilst the house was in consideration thereof, divers letters were brought to several members of the house, from several parts of the kingdom, declaring the apprehension which many faithful officers of the army had taken up, if such a Petition should be permitted to go on; as, particularly, a Letter of the 28th of March last, directed to colonel Rossiter, an eminent member of the army; wherein it is desired, by such as promoted this Petition, that the names of such officers and soldiers as subscribed the Petition should be sent to colonel Hammond, lieutenant general Hammond, commissary-general Ireton, colonel Lilburne, lieutenant colonel Grimes, or any three of them. On the consideration of what was mentioned in this and other letters, in confirmation of what was formerly presented by the gentlemen articled against, the house of commons did send for several of the persons before-mentioned; and, as is conceived, had very good reason so to do.—And whereas it is said, 'That a committee was appointed to examine the truth or falsehood of them.' If by the truth or falsehood of them is meant, the truth or falsehood of the persons stiled divers eminent and faithful officers of the army, then how could they be said to be immediately discharged as such, against whom nothing could be charged or proved at all?—The gentlemen articled against do further say, That it is a very ill use that is made of the parliament's indulgence, not to proceed with such severity against those persons convened before them, as aforesaid, as to affirm, That, therefore, nothing can be said against them: the like ill use was formerly made of the parliament's so far condescending to the desires of another paper, said to come from the Army, concerning the obliterating of the Declaration relating to the Petition; both which expressions might well, in modesty and duty, have been spared.—And whereas this Article is stuffed with great swelling words of vanity, as though the gentlemen charged by this Article were pressed to produce their proofs and evidence, if they had any, before the committee; it is answered, That the persons brought up to the bar were, by their own confession in this Article, immediately discharged. What need then was there, or to what purpose was it, to bring any such proofs against them, when as the clemency of the house discharged them?—In a word: It is most demonstrable it was the parliament's indulgence, not the innocency of several, if not all, of those who were questioned, which brought them off from punishment; and it were to be wished, in regard of these and their subsequent proceedings, that some proportion of meekness and ingenuity towards the houses, did accompany so much professed integrity, as is vaunted of by the framers of this Article and Pamphlet.

To the tenth Article, which charges Mr. Hollis, sir P. Stapylton, sir Wm. Lewis, sir Wm. Waller, sir J. Clotworthy, and major-general Massey, 'to have been instruments in

'obstructing the Relief of Ireland;' and then relates some passages of theirs in the house, which could not be discovered to the army by any but members, contrary to their oath and duty, an high violation of the house's privileges) they say, 'That they have faithfully, cordially, and industriously, at all times, and upon all occasions, to the best of their understandings, promoted the service of that poor bleeding kingdom; that they did desire supplies might have gone in an intire body out of the army, and that as speedily as possibly could be; so as some of them took the boldness to move, That sir Thomas Fairfax might have been sent thither; which not succeeding, yet the house resolving 8 regiments of foot, 4 of horse, and 1 of dragoons should be sent out of the Army, they, as zealously as they could, endeavoured the putting of it in execution, and attended the committee to which it was referred, constantly and diligently: and they doubt not but the great God, who will not be mocked, will judge them according to their deserts who have obstructed it, by discountenancing and affronting them who offered to embrace that service at the Convention of Officers, March 22, 1646,\* by cashiering, assaulting, and turning out of their quarters such as declared their readiness for that service, under the ignominious notion of Deserters of the Army, and as men untrue to the common interest of the soldiers; and by a positive Declaration, 'That whatsoever faithful commander should be appointed for the service of Ireland, they must shew themselves averse to that service,' as is expressed in a Letter of the Agitators to lieutenant general Cromwell, dated April 30, 1647. And, in truth, colonel Robert Hammond's high and unreasonable Propositions concerning the present service of Ireland, viz. 'That the time of his employment, and those of this army going with him in this service, exceed not 2 or 3 months at the furthest; that the forces going over with him be not obliged to any other service whatsoever, more than the possessing or defending of Dublin; that colonel Hammond himself may have the command of the garrison of Dublin, and all the forces in it, during the said term; that shipping be ready in the harbour of Dublin, victualled at the parliament's charge, with sufficient convoy, 14 days before the expiration of the said term, to transport the said forces back again for England, &c. and that upon other terms than these he doubts the number would not be considerable that would go over for that space,' clearly demonstrates his and the army's strange averseness to Ireland's relief; and that all they aimed at was but to possess themselves of Dublin for the present, for what ends, themselves and their proceedings since can best discover.—The informations which they gave into

\* "See a Vindication of 167 Officers that are come off from the Army, and the printed Petition of the Officers to sir Thomas Fairfax." Notes in the Original.

the house, concerning the engagement of divers officers both of horse and foot for the relief of Ireland, they avow to be true; but are extremely misrepresented in this Article: For whereas it is falsely suggested, 'That they informed the house that, by their procurement, there were 50 companies of foot and 10 troops of horse of the army ingaged for that service upon the terms propounded by the parliament;' the truth is, That divers officers of horse, relating to so many troops, and some of the officers of about 50 companies of foot were, by subscription, personal promise, or assurance from others, really and truly ingaged, as may appear by the report made unto the house, unto which they refer themselves; but afterwards many were drawn off again by the artifice of those, who, though they pretended Ireland's relief, have their ends rather upon the confusion of England than the relief of Ireland, as their proceedings do manifest.—Concerning the Subscriptions of colonel Butler, lieutenant colonel Jackson, major Gooday, and others, for that service, supposed to be procured in delusion of the parliament, to mislead it into a vain imagination of a strength out of the army, which had nothing of reality in it, in regard those officers did then declare their unwillingness to go into Ireland upon any terms whatsoever; truly we conceive that Declaration from the Officers, bearing date the 22nd of March, will sufficiently clear both from any dishonourable combination; wherein it will appear that they obliged themselves no further, than either to ingage in their own persons, or to improve their interests in their respective commands, for that service; which last obligation they have made good like men of honour.—As for those Officers of colonel Butler's and sir Hardress Waller's regiments; their names might be given in by those who knew, or might justly suppose, that their inclinations led them to embrace that service; if their friends were mistaken in them, or their minds since altered, we know not what crime can be imputed to any. Lieutenant colonel Farrington was never presented by them to the house as a lieutenant colonel of the army, and ingaging for himself and his regiment for Ireland; but only as a gentleman that had formerly held the quality of lieutenant colonel, and yet did retain a very great and deserved interest in that regiment, and with whom they conceived the regiment would be very willing to engage.

To the eleventh Article, which charges sir P. Stapylton, Mr. Hollis, sir J. Clotworthy, sir Wm. Lewis, major general Massey, sir Wm. Waller, and Mr. Glynn, 'with commanding part of three regiments, advanced for Ireland from Brousgrove in Worcestershire, back to Reading, with an evil intent to draw forces together for a new war, and this being done upon the Sabbath-Day; they answer, That, out of their zeal to promote the service for Ireland, they met at all times when they were summoned at Derby-house, where the council sat early and late; and some times on the Sabbath-

day, being in truth a work of the greatest piety and mercy; which certainly was not for their ease, and they hope rather a merit, than to be reputed a crime; That that business was transacted at a full committee, whether upon the Sabbath-day or no they know not; but they know, and affirm, that the reason why those regiments were ordered to come to Reading, was only that money might be sent to them for their pay; the officers representing to the committee the great necessities of the soldiers, and that where they were then quartered in Worcestershire, they did not know how to convey it thither with safety, in regard it must pass through the quarters of the army, who had expressed great displeasure to those forces which were drawn off for Ireland; and the committee was the rather induced to it, because they knew the money which was sent to Oxford, for disbanding a regiment there quartered, when, upon their refusal to disband, it was ordered to be brought back, was violently taken away by the soldiers from those intrusted with that service; and the committee feared some such attempt for the intercepting of this money, which occasioned that calling back to Reading; and not any such design as is, most falsely and maliciously, in the Article suggested.

To the twelfth Article, wherein sir J. Clotworthy is said to 'have converted several great sums of Money to his own particular use in the years 1642, 1643, 1644, and since; which, by several orders of parliament, and of the Irish committee, were designed for the Relief of Ireland;' first, he answereth, That he never received any money from the beginning of the war until this day for the relief of Ireland in general; but only for the particular charge he hath in that kingdom, wherewith he was honoured in the beginning of the war by a special order of parliament. And for the particular sums in that Article suggested to be received by him in money, he saith, That he never received any such money, and was so far from making any particular use of such, either money or provisions, as were designed for supporting the soldiers under his care, to their prejudice in the least degree, that he hath disbursed above 3,000*l.* out of his own purse, and by his credit, for their support and relief, more than was received. He further saith, That for the sum of 280*l.* in the Article mentioned, by an account delivered to the committee of Accounts in June 1644, he was so far from intending the least prejudice, either to the state here, or that kingdom of Ireland, that, amongst other sums, he charged himself with the said 280*l.* for 20 butts of sack, which he should have received from one Whitscot; who failing therein, the said sir John converted the credit of the ordinance for the said 280*l.* into clothes for his soldiers, as, upon full examination and debate several years since had thereof, before the committee of accounts, may appear.—And by the said account he is likewise charged with 300*l.* in the article men-

tioned for 120 pair of pistols, the most whereof he exchanged, by order, out of the stores of this kingdom for firelocks, which he sent over to the soldiers of his regiment, and the remainder of the said pistols were delivered to his troop; and he never converted any of the said pistols to his own use, though he conceives he might have done, having given allowance for them on his account: and for the money for the said pistols, as no part thereof ever came to his hands, so he conceives the same is yet due and unpaid to one Abraham Vandenbeind, who provided the said pistols on the credit of the state.—For the sum of 700*l.* for 2,000 swords, he knoweth nothing thereof, nor ever received any such sum; but acknowledgeth that he is charged by the said account with 175*l.* for his part of 2,000 swords; which, as the former sum of 280*l.* hath been laid out, with much more of his own, for the service of the state; so as the said sir J. Clotworthy having prevented the informers by his account long since given in, and there remaining so great a sum disbursed by him, over and above what he hath received; had he retained any part towards his own disbursements, which he conceives he might justly have done, yet could it not have been charged against him for so heinous a crime, and that in prosecution of the design in the general charge mentioned, as is impertinently laid down in the said article.—And for the other divers sums of money, suggested in general to have been received, from time to time, by the said sir John for the use of Ireland, which are alleged not to be employed as by the several orders was directed and intended; when he knows the particulars, he hopes to give a satisfactory answer therein; and wishes that some few of his many accusers may be able to give as just an account for the many sums they have received, in relation to their employments, as he hath done, and is ready to do, for those few sums directed for his and his soldiers' support in that hard war of Ireland.—And whereas, by this article, it is suggested, 'That the said sir J. Clotworthy hath, within two years last past, received several sums of money, arms, and other provisions, for a troop of horse, which he pretended he had raised in Ireland;' he saith, That he never pretended to have raised any such troop, though he may, with some confidence, affirm, he hath, to his great charge, these five years last past, maintained a troop of horse, which was formerly under the command of capt. Upton, deceased, and after his death conferred on him; which troop he hath often recruited since his command thereof, being about five years space, during which time there was never received from the state, in money, above seven weeks pay, with some little provisions of clothes and arms, which he duly returned to the said troop, with some addition of his own, for their better support in service; judging it a most abominable act to detain any thing at all, especially of so little, designed for such necessitous soldiers.—And whereas, by

the latter part of the article, it is most scandalously suggested, 'That the said sir J. Clotworthy, for money and other rewards, hath preferred John Davis and Wm. Sommers, and others, to be intrusted with the Irish affairs, who have kept correspondence with the enemy, and defrauded the state of other great sums of money; and that he hath been privy to, and a sharer in, such their actions,' he saith. That the said charge is most false and untrue in all the parts thereof wherein he is concerned: and for the said Wm. Sommers, he saith, He never preferred him to be intrusted with any of the Irish affairs, nor knoweth of any employment he ever had in that way, it being notoriously known he never had such employment since the rebellion of Ireland began; so as he was not in any capacity to defend the state. The said sir John further saith, That John Davis hath been contracted withal for great proportions of victuals, arms, and clothes, for Ireland, as a merchant; wherein the committee of both kingdoms, and the committee for the affairs of Ireland, the consent of the houses first had, have dealt with him after others refused such contracts, as he then accepted, and since performed; to most of which the said sir John was not privy, and no participant at all with the said John Davis in any of the particulars contracted for, as is now, and hath been formerly in printed pamphlets falsely suggested; but that the said John Davis was ever trusted with the affairs of Ireland other than as a merchant, (whereby he had the opportunity, in performance of his contracts with the state, to lay out his own money by great sums, and get it again as he can, (whereof there may be now some doubt) the said sir John is totally ignorant.

To the thirteenth Article, wherein, among other things, 'secret intelligence to have been held with the lord of Ormond, by cyphers, is laid to the charge of the said sir J. Clotworthy,' his answer is, That he, together with sir Thos. Wharton, sir Robt. King, sir Robt. Meredith, and Rd. Salway, esq. or any three of them, being appointed commissioners, but not jointly as is pretended, to treat with the lord of Ormond, for the delivery of the sword, &c. of the city of Dublin; after four days treaty, according to their Instructions, the treaty not taking effect, the commissioners resolved, That three of them should go for Belfast, and two of them come to London: and whilst the commissioners were in preparation for their departure, upon several just and warrantable occasions, they repaired jointly and severally to the lord of Ormond, who seemed to be much troubled that the treaty took no effect; professing the only cause thereof to be the want of the king's assent, which he said he hoped to gain; desiring to have it so presented to the parliament, and that he might acquaint the parliament, and the commissioners then going for Belfast, with the king's Answer; and, last letters should be in-

tercepted by the rebels, there was a cypher agreed on, which was known to several of the commissioners when it was delivered, and of which the said sir John minded the other commissioners at Belfast after their arrival there, and before any thing was written by the same from the lord of Ormond; and, about a fortnight afterwards, the lord of Ormond, by the means of one capt. Ward, conveyed a little open Paper in cypher, directed to the said sir J. Clotworthy; who, as soon as he received it, did communicate the same to the rest of the commissioners; which being decyphered, there was thereby intimated, That he was more than hopeful they should shortly hear from him to their content; to which the commissioners returned an answer, That they should be glad to hear of the content he was hopeful to give: with all which, and the other transactions of that affair, the committee of Derby-House were made acquainted, and reported the same to both houses before sir John Clotworthy came out of Ireland; and the houses, having approved of the carriage and endeavours of the commissioners upon the whole transaction of the business, have long since so far owned them therein, that they have given thanks unto them for the same.—This being the only particular wherein the said sir John is, by this Article, charged to have held intelligence with the lord of Ormond; and that being by the advice of the rest of the commissioners, in manner as aforesaid, and for so good an end, as the giving his lordship an opportunity of new application to the parliament for rendering to them the city of Dublin and the other garrisons under his command; which hath, since that time, taken effect accordingly, to the exceeding great advantage and strengthening of this kingdom's interest in Ireland; the said sir John leaves it to the judgment of all equal minded men, whether or no there be any just cause to exhibit such a Charge against him for the same, especially by an army pretending such good affections to Ireland's welfare.—For the other part of the said Article, 'concerning the said sir J. Clotworthy's holding intelligence with the lord Digby;' he directly denieth any such thing, as being utterly false and untrue; for he never saw the said lord Digby these many years, but one night accidentally, when being last at Dublin with the other commissioners aforesaid, he was sent to the Castle of Dublin, by the said commissioners, concerning an officer of col. Moore's, that had received an injury by some persons that related to the lord of Ormond; at which time the said lord Digby came into the room where he was, but he had no discourse with him in private, nor at all, other than common talk, several persons being present: neither hath the said sir John, since the said lord Digby deserted the parliament, ever exchanged letter, message, or word with him, directly or indirectly, otherwise, or at any other time, than is hereby declared.—And whereas, by this Article, it is charged, That, in order to such secret intel-

ligence,' (of which he admires a whole Army residing in England should have such certain and public notice, as to make it a positive Charge, and undertake to prove it upon oath, were it so secret as they charge it, as the Article alledgeth to have been held by the said sir John with the said lord Digby,) 'the lord of Ormond and the said lord Digby lately employed one Slingsby, who,' as the Article saith, 'pretends a design about the Prince, to come into this kingdom;' the said sir John utterly denieth to have had any thought of any such design, or any knowledge of the said Slingsby, or of his coming into the kingdom, until he heard that one Slingsby, whom he yet knoweth not, had been examined before the committee at Derby-House. And the said sir John presumeth he hath, to the said committee, confessed who employed him, and to whom he was employed here.

To the fourteenth Article, which charges sir J. Clotworthy, Mr. Hollis, and sir P. Stapylton, 'with obstructing Articles exhibited against the lord Inchiquin; calling back the lord Lisle from the government of Ireland; causing the command of the forces in that kingdom to be committed to the lord Inchiquin, he writing a Letter to his lordship, upon the receipt whereof he should express he had discretion to put out all those who favoured Independents;' they do say they were so far from keeping off any proceedings upon those Articles, that they furthered it all they could, and several times moved it in the house; being desirous to have all cleared concerning the lord Inchiquin, whom, as they believed to be a man of honour and fidelity, so if upon examination of his actions, he appeared to be other, they were resolved to declare their sense of him accordingly.—As for what concerns the lord Lisle, they say, His lordship's time expiring, which was but for one year, either for himself or any one else to continue in that command, the parliament was pleased to dispose of the affairs of Ireland in another way; in the agitation whereof in the house they went according to their judgments and consciences, without respecting any person living.—For the Command of the Forces of that kingdom, which, as to the lord Inchiquin, can only be understood of Munster, they do not know that ever any thing was here done in it at all, there having been no occasion for it, as to their knowledge: and as for the Letter mentioned to have been written by them, or any of them, or from some other person by their, or all of their, direction, they say, As it is altogether uncertain and illegal, so it is a mere fiction, (for they never did any such thing) and tends to draw the odium of Independents upon them; to worse advancement, both in Ireland and elsewhere, they fear they may prove obstructive, as this article clearly insinuates.

To the fifteenth Article, sir W. Lewis and Mr. Glyan say, That the Order of the 30th of April, in the Article mentioned, (if there were

any such) relates to them only as members of the committee, for whom they intend not to answer : But in truth there was no such order ; it was only a report, not an order, and intended only for the county of Caermarthen, however it came to pass the words were general ; and that was done in order to be reported to the house, and accordingly was reported, and after repealed by the committee, as they were informed. And as for the publishing and sending thereof unto every committee in Wales, they know nothing thereof ; neither was it done by their, or either of their, directions or consents.

To the sixteenth Article, sir W. Lewis denieth his protecting any Delinquents in South-Wales, as is untruly alledged. And as for the earl of Carbery ; he did no more than move in the house of commons to make good what major-general Laugharn had promised and pressed for on his behalf, by his Letters to the Speaker and committee of both kingdoms ; representing the advantages that came to the parliament by his conformity, and how it would further their service to oblige him.—For Mr. Carew of Glamorgan and Mr. Herbert of Brecknockshire ; after their long imprisonment, they being upon their compositions at Goldsmiths-Hall, he did but move the ascertaining of their fines according to the rules prescribed to the committee there ; having observed that delays brought a prejudice both to the parliament and the parties sequestered, by abusing the one in their authority, the other in their estates. And for Mr. Herbert ; after his sight of some high Articles drawn up against him by Mr. Rumsey, he never spake in his behalf, and he yet continues a prisoner in Ely-house. For Mr. Morgan of Brecknockshire ; he is one the said sir William hath ever used with no more than a civility suitable to their being country-men, and of many years acquaintance ; which he believes no good man can look on as an offence. For Mr. Gwyn and Mr. Lewis of Radnorshire, two of the committee in that county, and those that, by major-general Laugharn's certificate and colonel Birch's public testimony, had furthered the reducing of that county ; he did but publicly move in the house that some disputes concerning them, and some differences between them and others of the committee for that county, might be referred to the committee for Gloucester, sitting in Channel-Row ; which he did out of his desire to serve the parliament, by keeping peace in those remote parts, and for no ends at all of his own.—And further saith, He was never so much as present at any debate concerning the Sequestration of any other person whatever in either of the fore-mentioned counties, save those above-named ; nor ever so much as motioned to any member of either house, committee-man or other, either the remitting or favourable compounding with any, upon any terms not warrantable by the rules prescribed, or their compounding with any that were incapable thereof ; nor ever did animate or encour-

rage any, since this unhappy difference, to continue their fidelity to the king's cause, by promising them, that if they would engage their friends with the king for him, he and his would be their friends in the parliament, as untruly suggested : looking upon that kind of conditioning as a thing below the thoughts of a gentleman.—What the Delinquents in those parts say of him, or how they look upon him, or how they or any others look upon those that charge him, or what shall be his or their lot at his majesty's coming to London, he is ignorant of ; but hopes that a little time will discover both him and them in their true colours ; and wisheth every man's return may be according to the singleness and integrity of his affections to the public peace and welfare of the kingdom.—And further he saith, That there being an Order for the nomination of Justices of the Peace for the county of Brecknock, he humbly named Mr. Roger Vaughan, now high sheriff of that county, to be added to the committee formerly named by the house ; also Mr. Meredith Lewis, Mr. George Parrey, and Mr. Edw. Williams, as the fittest persons he knew of to supply the necessity there was of justices in that county : and although he cannot say that when the king's forces had a power in those parts, but that many of them may have done that which is not justifiable ; yet for his brother Mr. Tho. Lewis, who was formerly one of the committee, he is confident his innocency is equal with any man's in that county, and his sufferings as great as any of double his fortune inhabiting there ; he having been carried prisoner, by sir Wm. Vaughan's command, to Ludlow-Castle, with one Mr. Hugh Williams, where they continued till he laid down eight score pounds for their enlargement ; and he can confidently affirm that no man is left out of commission, that any honest man can pretend, either by his estate or affections to the parliament to deserve to be therein employed ; and he could heartily wish that he or they that gave information on this Article, would have advised who else should have been recommended for committee-men or justices. And for Mr. Edw. Williams being made solicitor ; his commission was delivered upon certificate from three of the four gentlemen who are the only persons resident in the county of those that are named for the committee there ; and he believes he hath been so careful in his duty, that neither corruption nor remissness can be justly charged or proved against him.—And the said sir William saith, That his son was chosen Burgess for the borough of Brecknock by the unanimous assent of the burgesses, who adjudged him a fit person to serve for them ; and his fitness for that place he desires may be determined of by those amongst whom he hath the honour to sit, who have seen his demeanor, and are the only proper judges thereof ; but that he kept the writ 8 months in his custody, in order thereto, is most untrue ; for at his being in Brecknockshire in July 1646, having carried

the writ down with him; and finding, at Ragland, that Worcester was then but upon delivery to the parliament, and that the commissioners of peace for that county were those that continued in their authority by their old commission, he thought it then no fit time for a public meeting in that town upon such an occasion, lest some ill consequence might have followed thereon; and thereupon, at his return, acquainted Mr. Prideaux, one of the then commissioners for the great seal, therewith; and, with his approbation, returned the writ to Mr. Scobel, the register, in whose custody it continued till he called for it again some five weeks before the election.

To the seventeenth Article the said sir Wm. Lewis acknowledgeth that, by the ever-honourable the earl of Essex's, commission, and the approbation of both houses of parliament, he was, in the beginning of these troubles, made governor of Portsmouth; though not only without his desire but against it, as it is well known to sir John Evelyn of Wilts, a member of the honourable house of commons: That during his service there he received much of the public treasure, for which he gave such an account, as that he had his discharge from the committee for accounts, bearing date the 15th of March, 1644; and the said committee, coming to the house of commons with their certificates of that Account and others, did there publicly attest it to be both just and frugal; whereupon the house was so favourable as to vote, on the 3d of April, 1645, their approbation of his account so presented unto them, and to order 'That the committee of the Revenue should, with their soonest and best convenience, pay unto him the sum of 415*l*. 16*s*. 8*d*. part of what remained due unto him upon his said Account,' as appeared by the certificates above-mentioned; which evidently disproves that part of the Charge, which doth most unjustly accuse him for not accounting; of which he believes his greatest accusers are far more guilty than himself, since he never heard of any certificate made to the house of their accounts. And whereas he is likewise charged, while he was Governor there, 'frequently to have held correspondence and intelligence with the king's party, 'about the delivery up of the said garrison,' some such aspersions having been very undeservedly raised on him, during his command there, the committee of lords and commons for the safety of the kingdom were pleased to write to him to come up to London, by their letter dated the 8th of June, 1643; where the said sir William pressing, by his importunity, the said committee and earl of Essex that they would examine whatever could be alledged against him, to punish him if faulty, and right him if injured; upon the earl of Essex's Letter to the said committee, after a full examination of the business, the committee, by their letter, gave his lordship this Account following: Westminster, July 29, 1643.

'May it please your excellency; We have

'examined and debated the business concerning sir Wm. Lewis, as your lordship did desire; and out of all those jealousies and allegations which have been offered against him, there amounts nothing, as we can gather, which can derogate from his honour, or the public confidence reposed in him in his command at Portsmouth. This account we render to your excellency, as well to answer that which hath been referred to us by your excellency's Letter, as that which is required from us by sir Wm. Lewis's innocency. This being the state of this business, it is left in the hands of your excellency to repair this worthy gentleman in what manner you shall please; and so we take our leave, and rest, &c. Bedford, Pembroke and Montgomery, B. Denbigh, W. Say and Sele, Jo. Pym.'

The which Letter being carried to his excellency, after his perusal thereof, he wished the said sir Wm. Lewis to repair again to Portsmouth, and to take care thereof; but he having vindicated his innocency, and to manifest how little he regarded either places of honour or gain, (which others aspire to) desired to be excused, and quitted the employment.—Why, or upon what grounds, the said sir William, with divers other persons who faithfully served the parliament, was left out of the Proclamation mentioned, he knoweth not, being no ways privy to their counsils, nor what his majesty was pleased to say of him; but this he knoweth, and it is generally known to that part of Hampshire where he lived, that, about October, 1643, there was plundered from him by the king's party to the value of between 2 and 3,000*l*. by means whereof, his lands being unstocked, he made not three pence of them in three years. For his estate in Brecknockshire, which by the charge, is allowed to be worth about 600*l*. per annum, it was not held worth sequestering in those parts, in regard of the taxes laid upon it; and during the time of the troubles he made little profit of his estate there or elsewhere.—And as it is no argument that some malignants in arms against the parliament did hold correspondence with them, because their estates in some places have not been yet sequestered, through negligence of the officers, or want of evidence; so he presumes it can be no proof of his complying with the king or his party, in the judgment of any indifferent person, or of his accusers, who now profess their correspondence with his majesty without the houses privy, in their late printed Letter, of July 8, 1647, to both houses, because he was not sequestered upon the same or any such like occasion; which, for ought he knows, may be the case of some other well-affected members.—As concerning colonel Price's Estate; upon the sad complaint of Mrs. Price of her necessities, he wrote a Letter to the committee only to allow unto her the fifth part of her husband's estate, according to the ordinance of parliament in that behalf, and to restore her wearing apparel which had been taken from her, (an extremity he had not heard

of before used to any other) which he hopes his accusers, who now desire justice for, and indulgence towards, delinquents, which they charge as a crime in others, cannot dislike: but for the letting of colonel Price's estate, he did not intermeddle therein; but believes the tenant that rents it at 50*l.* per annum pays a full value for it to the state, considering it is charged with annuities of 120*l.* per annum issuing out of it, his wife's fifth part, and all taxes and contributions.

The said Mr. Glynn, as to the Charge in the sixteenth Article, whereby he is charged 'To procure several persons that have been commissioners of array in North Wales, to be named in commissions of peace, and other places of greater trust and command,' saith, The Article gives not any instance of any such person that he hath procured to be named a justice of peace, or any other place of trust or command, except colonel Glynn, his brother, made governor of the town and castle of Caernarvon. And for the said colonel Glynn, he avers he was never any colonel in the king's army, but constantly declared his affection to the parliament: and for that cause he was, in the beginning of the troubles, besieged in his own house, with cannon planted against it; where he was taken prisoner, his arms seized upon; himself charged with treason, and intended to be proceeded against at Shrewsbury, had not some persons interposed and procured his enlargement, upon security that he should not bear arms for the parliament; and as he hath suffered for his affection to the parliament, so he hath advantageously acted for them, by inviting major-general Milton to come into North Wales; joining his forces with the said major-general, and relieving the parliament's forces with money; by reason whereof the county and castle of Caernarvon was reduced to the parliament's obedience, of whose eminent services the house of commons took special notice, in a Letter written unto him; and, for recompence of his sufferings for the parliament, and the great service done for them, he was made governor of Caernarvon, for the safety of those parts, and encouragement of the well-affected there.

To the eighteenth Article, whereby Mr. Glynn is charged 'To have taken Rewards of several persons for service done them in the house; and, in particular, 100*l.* paid unto his wife by the drovers of Wales, for service done them,' he saith, That the same is a false and slanderous Charge; and for the 100*l.* supposed to be given to his wife, who is dead and cannot answer for herself, the same is untrue; for Mr. Glynn lent those poor men 100*l.* out of his own money, to find them bread, which was afterwards repaid him, when they procured money upon the credit of the Excise, as will be justified by many persons of quality; besides which there was no other 100*l.* that came to his wife's hands.

To the nineteenth Article, Mr. Glynn answers, first, concerning Delinquents, That the

Charge is general, and therefore he can make no particular Answer, but generally not guilty. Secondly, concerning the putting out of the Militia; That he was no way concerned in it; they were presented by the common-council, and chosen thence when he was not present, and afterwards approved by both houses; and he cannot take upon him to give reasons to justify the acts of both houses or the common council, who are only impeached by this Charge, and must plead not guilty of intermeddling with putting in or putting out.

To the twentieth Article, where it is said, 'That sir P. Stapylton, Mr. Hollis, and sir Wm. Lewis, have, by their power and countenance, obstructed justice in the cause between alderman Langham and capt. Limery, and that of J. Gunter,' they answer, That Mr. Hollis and sir P. Stapylton, being one afternoon in the court of Requests, heard that the house of peers were then to sit, which made them go to see what the occasion was; and, coming into the lobby, found there the earl of Rutland, who told them their house met about a great business betwixt Langham and Limery, and some discourse passed concerning it; when Mr. Hollis and sir P. Stapylton said, They understood that the merits of the cause was not at all in question, only the entertaining of it upon an appeal, which they conceived was the common justice of the kingdom, and not to be denied to any: which having said, they went away; nor was it done in secret, but spoken publicly, and in the hearing of some of the counsel for Limery: and they do utterly deny the speaking of any such words as are alleged to be said by them; for they were so far from engaging their interest in it, as they do not to this day know what the lords did upon it. And sir Wm. Lewis doth absolutely deny his being there present at all, when any such conference was with the earl of Rutland; and cannot but observe there should be that significance attributed to his presence and gesture, as thereby to discover his thoughts and inclination, especially when he was not there in person. And as for the cause instanced concerning John Gunter, he conceives it to be a suit depending in chancery betwixt the father and son, both nearly related to him, but no further proceeded in than bill and answer, that he knows of; and what influence his countenance could have, so early days in the beginning of a suit, let all the world judge.

To the twenty-first Article, which concerns Mr. Nicholl only, he saith, That although his election was voted to be void by the committee of privileges, whose mere votes exclude no members from sitting in the house, where no witnesses were heard on his behalf; yet he conceives his election good, and hopes it will be thought so by the house, when they hear a true state of the cause. And whereas they object, it hath lain four years unreported; Mr. Nicholl appeals unto the house, and that worthy gentleman in whose hand that report lay, being never prosecuted by his competitor,

whether he hath not endeavoured to have that report made, and the business determined: and still continues his humble request to the house for the speedy determining of the same. To the second clause Mr. Nicholl answers, That he never used any threats, menaces, or indirect practices, for the bringing in of any members, either out of Cornwall or any other country in the West: And it is well known that those worthy gentlemen there elected, and now excepted against, were fairly and duly chosen by their own interest and public demerits; and their unbiassed integrity is such, that they detest the maintaining of a faction, or carrying on of any design other than the common good. To the third clause of that Article Mr. Nicholl saith, That he continues in an office of Master of the Armory in the Tower, wherein he hath faithfully served the state for their advantage; and that since the Self-denying Ordinance passed the houses, he never received one penny of his fee from the Committee of Revenue; but confesseth to have received a rent of 34*l.* a-year, or thereabout, and a fine for two houses, which he is to be accountable for to the parliament: And it is well known that Mr. Nicholl lost a far better office, both for profit and esteem, than this, (the Customers Place of Plymouth and of all the ports in the county of Cornwall) for his fidelity to the parliament; and hath received no reparation for the same, as divers others have had for their lost offices. Besides, he hath been employed in many long and chargeable journeys, and hath expended divers great sums of money in them, which he hath borrowed of his friends; and hath yet had no satisfaction from the parliament in consideration thereof, as some of his accusers have had for meaner services.

To the twenty-second Article, Mr. Nicholl saith, That neither himself, nor any other for him, ever took one penny, directly or indirectly, for any thing done in parliament, or in any of their committees; wherein he hath had the honour to serve in some of the greatest Trust. And whereas he is charged to bring sir W. Uvedale into the house upon his coming from York, for the sum of 150*l.* it is altogether false and scandalous. Upon sir W. Uvedale's return from York, he came into the house, and sat there without any question; some time after, he had leave to retire himself into the country; and at his return to London, near two years after, the dispute grew about his admittance into the house; and he was admitted into it upon a solemn and serious debate, without the motion or procurement of Mr. Nicholl; which admission, if undue, is a charge against the whole house, not Mr. Nicholl. True it is, that when sir W. Uvedale was at York, and treasurer of the army there, Mr. Nicholl (having an assignment made him by his brother captain Humphry Nicholl, to receive an arrear due to him for his service in the north), wrote to sir W. Uvedale to send him that money: whereupon

sir W. Uvedale, when he came to London sent him a sum of money as an arrear due to, his brother; but whether so much as is specified in the Article, he knows not, by reason his papers and accounts of that business are not in town. As for Mr. Nicholl's receiving of Rewards; he challenges all his accusers, (many of them having had occasion to use his poor service) and all others, to prove him guilty of receiving the least reward for any thing done by him in discharging of his public Trust. And whereas it is charged, That he discovered a Design for the searching of Greenwich-House; he saith, That about midnight, in August, as he takes it, 1642, there came an officer, with some soldiers, to his lodging, and brought with them a warrant for him to sign for the searching of Greenwich-House; which warrant he signed, and by the same officer, he sent three lines, written on an open paper, to a noble lady who lodged in the house, that she should not be frighted with the coming of soldiers in such an unsensable hour; which lady was no servant of the queen's, but one who had given a clear demonstration of her affection to the public, by a large voluntary contribution upon the Propositions of Money and Plate: So that he hopes this will not be thought a fault to send an open paper to a person of that quality, for such purpose, by the same officer that was to put the design in execution.

As to the 23d, 24th, and 25th Articles, which waste themselves in a scandal touching Mr. Long alone; for to a printed imputation of Cowardice, Covetousness, and Treachery, where no particular person appears to avouch the truth, or give satisfaction for the falsehood, of such an assertion, no better name can be given; yet he, to give the world a taste of what truth they may expect in the rest, returns unto these three this Answer, That howbeit his education had not much acquainted him with military employments before the late unhappy wars, which he thinketh to be the case of many who now reckon well of their abilities in that profession; yet (through the invitation of his excellency the late lord general the earl of Essex, and the committee for the safety of the kingdom, who thought it of some importance at that time to interest persons of estate and relations, though not bred soldiers, in that employment) he did accept the command of a troop of horse under his excellency, the greatest part whereof were raised by himself and his friends; and, in the head of that troop, he charged at Edge-Hill, in the regiment then under the command of sir William Balfour, which was the first that brake into the enemy; in which charge he lost his horse, and, being left dismounted, did yet, with his single pistol in his hand, give quarter to several of the enemy; and was then, by capt. Harcourt, quarter master of his troop, remounted; continued out the service of that day and the next, and was one of the last troops that brought away the ammunition; a thing haply not known to them who gave the information

for this article, seeing it was the ill-hap of some commanders that day to make an over-hasty retreat: and of some others, of no little eminency now, never to come there; much less to charge, though they quartered very near the field.—When the unexpected skirmish at Brentford happened, his troop, as the greatest part of the army besides, was dispersed: but so soon as he could get it together, he went thither and stayed there till the business was at an end: shortly after, his troop being to march towards Bristol, where some of his fellow captains, whose experience he thought as little as his own, received sudden and great commands, he declined that service under them, and intended to return to his other in the house of commons; but some disaffections and backwardness to contribute to the public service appearing in some persons of quality in the county of Essex, he was, by commission from his excellency the earl of Essex commanded thither, and authorized, with other gentlemen of that and the counties of Hertford and Bedford, to raise horse, arms, &c. upon such as had not contributed; touching which employment, without drawing the particulars into a long discourse, he saith, That he acted nothing without the concurrence of two gentlemen, at least, of his fellow commissioners; and thereof, and of what had been raised by them for the public service under that authority, he, long before any committee of accounts was settled, did publish the particulars in print; and thereof did, immediately after that committee was settled, give and pass an account upon oath; which course had others taken, who have greater accounts than these, there would haply have been less room for this accusation: The plundering and oppression in the article mentioned, he reckons as odious as it is an untrue suggestion.—As for Mr. Thomas Manwood in the article mentioned; he much doubteth whether there be any such man residing in the county of Essex; sure he is that no protection from the then lord general's excellency was disrespected by him; and upon the best enquiry Mr. Long can make, the person intended by Mr. Thomas Manwood is no way eminent for his good affection: and what was done towards him was well warranted by the commission under which Mr. Long and those other gentlemen of that country were employed; and nothing, by countenance of that authority, was converted to Mr. Long's private advantage; And so little hath the humour of covetousness, with which the printed articles charge him, prevailed, that there will be nothing found in his accounts to be demanded for his colonel's pay; an omission of which he dares undertake to excuse them that are most willing to accuse him.—The damages sustained by Mr. Long, (not pretended, but real) mentioned in the 24th article, to be the inducement of that favour conferred upon him by the chancery-office, were under-considerations; and, together with his four years imprisonment and sufferance for his public service in former parliaments, weighed by the wisdom of that house,

and his capability to execute that place, (usually discharged by able deputies, as now it is) determined by that judgment which he dares not, and thinks no men or company without these walls ought, to dispute: And therefore to that quarrel, more against both houses than himself, he thinks himself not bound to give, and believes no wise honest Englishman will expect, or well receive, any other answer. This only he saith, That neither the eminency nor profit of the office can surely be the cause, that it only, of all the offices and benefits accepted from the parliament by other members, should be now subject to observation, and made a matter of charge.

In Answer to the twenty-fifth, and, perhaps, for the weight of it, the last Article in that printed Paper; he saith, That if any man hath, which is not known to him, seriously, or in scorn, used that scurrilous phrase of 'Parliament-Driver,' towards him, (by reason of his more than ordinary diligence in persuading and pressing his fellow members of the honourable house of commons, according to their trust and duty, to remain in that house or return to it, when any thing hath been in debate; which, in his apprehension and conscience, required their judgment, wisdom, and suffrage there), he is contented to own the fact, and leave the abuse to the author: Any unlawful carriage, in that particular, without the house, he doth deny; his demeanor within those walls, in that or aught else, no man without them ought to question or control, or he to give account of. And, for a close, he saith, That these his accusers, who have, against reason and justice, driven so many members out of the house at once, deserve the name of Parliament-Drivers, or Parliament-Riders, much more than he who desired only to continue the members within the house, according to his own and their duty.

To conclude: Upon the whole matter we do say, That it is our misfortune, not our misdoings, that we stand in this matter accused. Power may seize upon us and destroy us; but not justice, we mean the justice of man, for and in respect of these pretended crimes; not the justice of God, which we tremble at, and submit unto; and see it reach unto us, for our sins, this cup of persecution and affliction by the hands of men, the men of the world; who are themselves but the hand of God to correct his children for their good; their good in the end, though for the present it be grievous unto them; and befalls them many times occasionally, and in the eye of men, where they think themselves to be least deserving it, to make them examine themselves, and enquire where man cannot come, into their own hearts, to find out the true cause which hath provoked their God to afflict them; and so come to the knowledge of those evils and repent of them, which, otherwise, would have lain undiscovered, and, like a sleeping serpent, awaken afterwards to do them a greater mischief; which is at present our case, and we trust God will give us the grace to make this use of it: For certainly,

upon the strictest scrutiny of our consciences, and enquiry into our past actions and intentions, we cannot find we have deserved this return from any that can pretend themselves to be well-wishers to the parliament and to the peace of the kingdom. We can speak it for a truth, we are of those who are peaceable and faithful in Israel: We never sought great things for ourselves: We have mourned for the desolations of this kingdom, of three kingdoms: We have endeavoured our utmost, according to our several talents, as it hath pleased God to enable us in our several places and callings, as members of the parliament, as members of the commonwealth, to do all we could, to procure a settlement in church and state; We have desired a peace; we have laboured for peace, and, willingly, have never done the least thing to keep it off: We have all of us taken the Covenant; we dare not say that we have kept it to God-ward so well as we should: but we will say, no man can lay the breach of any part of it, as to the king, parliament, or kingdom, to our charge; nor, we hope, ever shall. Nothing in this world have we more heartily desired, than to see a happy and firm reconciliation between the king and his people; him on his throne, them in their liberties; both of them encompassed with righteousness and peace, and glorying in the parliament, as the foundation of both their happiness.—Yet now we are aspersed and misrepresented, by several pamphlets and papers concerning us, and by this printed charge, let the world judge. We dare appeal even to the consciences of our accusers, if they would speak out; perhaps with some it is in truth our crime, that they know us to be such as we are; perhaps we stand in the way, and prevent some destructive designs, therefore we must be removed; and that we may so be, we must be represented to be hinderers of peace, obstructors of justice, invaders of the liberty and freedom of the subject, abusers and misleaders of the parliament: In sum, whatsoever is amiss in the kingdom, we are made the cause, and must bear the blame of it.—“*Christianos ad ignem:*” What public calamity soever befell in the time of the primitive persecutions, the poor Christians were said to be the cause, and must be the expiatory sacrifice: But let men say what they will, Elijah was never the more the troubler of Israel, because he was so called.—We will say with Job, ‘Our Witness is in Heaven, and our reward is on High.’ This is our comfort and our confidence; we shall be acquitted before the tribunal of heaven: and we trust in the Divine Protection to have our deliverance and justification, even here upon earth, by the judgment of man; that is, by the justice of the parliament, notwithstanding the malice of all our enemies.

DENZIL HOLLIS, PHILIP STAPLETON, W. LEWIS, JOHN CLUTWORTHY, W. WALLER, JOHN MAYNARD, EDWARD MASSEY, JOHN GLYNN, WALTER LONG, EDWARD HARLEY, ANTHONY NICHOLL, Members of the Honourable House of Commons.”

The Eleven Members offer freely to withdraw.

July 20. This day Mr. Green, a member of the House of Commons, acquainted the House that he had a Message to deliver the house of the Desires of the Eleven Impeached Members, which the house voted to receive, and to be read, which was as followeth,

“Whereas his excellency sir Thomas Fairfax, and the Army do declare, that the proceeding upon particular Proofs to make good the Charge, will probably take up much time, and the present affairs of the kingdom, in relation to those great matters proposed by them, do, as they say, require a speedy consideration, and that they propound, that those greater and general matters of the kingdom be first considered of and settled: and in regard it is supposed, that the absence of these Members will make way for the present more quiet proceedings, to settle the perplexed affairs of the kingdom. That they are so far from making any interruption or disturbance to the proceeding upon, or settlement of the general affairs of the kingdom, that they desire, 1. That they may have leave to be absent themselves from the house for the space of six months, to go about their particular business. 2. That they may have liberty, or so many of them as shall desire it, to go beyond the seas, and have passes granted during that space of time. 3. That by that time the said six months shall be expired, they conceive, that the great and weighty affairs, tending to the Peace and settlement of the kingdom, will be over, and the house judge it seasonable to call them to a trial.”

#### Votes concerning the Eleven Members.

The house debated their Desires, and upon the whole passed these votes following.

1. “That leave be given to Denzil Hollis, esq. sir Philip Stapleton, &c. for the space of six months, to be absent from the house, and to go into the country, to follow their necessary occasions of business, as they shall think fit. 2. Secondly that Denzil Hollis, sir Philip Stapleton, &c. or any of them, have leave to go beyond the seas, provided, that they return to the parliament within the space of six months after this present, to attend the house upon the business concerning the charge brought into the house, from sir Thomas Fairfax and the army, against them. 3. That Mr. Speaker grant warrants to Denzil Hollis, esq.; to sir Philip Stapleton, &c. or any of them, that shall desire to go beyond the seas, and to return within six months after this present time\*.”

\* The motives to these Resolutions of the commons we find thus set down by lord Hollis himself, one of the impeached Members; “These gentlemen thought it best, rather that a breach should be made upon their occasion, that through their sides the parliament should be stuck to the very heart, and die for ever, to make it their own act of forbearing the house: and therefore they told the house, they saw

July 30. Resolved upon the question by the Commons in Parliament assembled, "That Denzil Hollis, esq.; sir Philip Stapleton, sir W. Lewis, sir John Clotworthy, sir Wm. Waller, sir John Maynard, major general Massey, John Glynn, esq. Recorder of London, Walter Long, esq. col. Edward Harley, and Anthony Nicholl, esq. be received into this house to sit and vote as members thereof."

On the 2nd of August following, the Army presented to the Commissioners whom the City of London had sent to them, "A Declaration" of his Excellency Sir Thomas Fairfax and his "Council of War on behalf of themselves and the whole Army; showing the grounds of their present advance towards the City of London," in which these Members are reproachfully alluded to.

August 16. Mr. Anthony Nichols, one of the Eleven Impeached Members, who had a pass from the Speaker to go into Cornwall, and two or three days since writ a letter to a commander in the army, to procure him the general's pass, he engaged not to act any thing prejudicial to the army, but was not granted him; and on his way for Cornwall was stopped by some troopers of the army, and this day brought back to the head-quarters at Kingston.

August 17. Mr. Nichols was brought to the General.

August 18. A letter was read in the house from Mr. Nichols, under restraint by the army, and it was ordered thereupon, that a letter should be written to the general, to desire that he may be discharged, or sent up to London, to answer such things as shall be objected against him.

August 21. This day we had certain intelligence of the apprehending six of the Eleven Members as they were going beyond sea, being taken within six miles of Calais: In brief it was thus; major Redman being upon the guard at Gravesend, had notice that some of the Eleven Impeached Members were passed by, and gone to Margaret's in Kent, hereupon he sent post after them, and as the messenger came to Margaret's, they hoisted sail, and were a mile at sea, inquiry being made of the fishermen what their carriage was, they replied, 'The gentlemen that went aboard were in very great haste.' One fisherman saying to them,

they were in that condition they could neither protect them nor themselves: that if they would not do as Achish did to David, who bid him begone because the princes of the Philistines loved him not; yet that they would, at their humble suit and desire, be pleased to give them leave to withdraw; and to such as desired it, passes to go beyond the sea: which at last they did agree to, though truly I must say, unwillingly; but which, all said, they looked upon as a good service done to the house for preventing greater inconveniences."

\* This very audacious instrument is given at large in 7 Rushw. Coll. 744, 3 Cobb. Parl. Hist. 746.

'I do not think but these are some Parliament-men flying.' Whereupon one captain Bennet who was in their company, drew his sword at him, but the fisherman being nimble of his heels escaped. The town understanding by the messenger what they were, very readily, at the beat of a drum, repaired to their colours, and forty of them, under the command of captain Launing, a valiant seaman, put to sea in a small vessel, and within six miles of Calais overtook them, who seeing themselves pursued, made hard to windward to escape, but could not: captain Launing plying them hard with small shot, and a frigate man of war, one captain Pierson, coming in to the assistance, the Six Members pulled down sail and yielded, viz. Mr. Denzil Hollis, sir Philip Stapleton\*, sir William Waller, sir William Lewes, sir J. Clotworthy, and Mr. Walter Long, and demanded by what warrant they were apprehended; answer was made, pretending it to be by sir Thomas Fairfax his warrant. They earnestly prest a free passage beyond seas, and great invitations had the seamen to let them escape, but it would not be, so they desired to be brought aboard captain Batten at Deal, which accordingly they were, but they were dismissed and sent to sea by captain Batten, and the seamen who apprehended them found threatened, and sufficiently reviled against by person major Kem.

August 25. This day a Letter was read in the House of Commons from his excellency sir Thomas Fairfax, and it was concerning Mr. Anthony Nicholls, one of the Eleven Impeached Members sent up prisoner from the Army on Saturday last, and committed to custody with the grounds of his detainment by the Army, and a further Accusation of High Treason against him: The House had debate of the General's Letter, and ordered that master Nicholls should be continued in safe custody.—But after a short time, the houses were informed, that the said Mr. Nicholls being committed to the custody of one Denham, one of the Serjeant's deputies, was escaped from him.

\* "Stapleton died at Calais as soon as he landed, and was denied burial, upon imagination that he had died of the plague: others remained a long time beyond the seas; and, though they long after returned, never were received into any trust in those times, nor in truth concurred, or acted in the public affairs, but retired to their own estates, and lived very privately." Clarendon.

"Sir Philip Stapleton and Mr. Long, went together in a ship to France, where that gallant English gentleman sir Philip Stapleton fell sick at sea, and grew more sick on shore at Calais, and within two or three days died there, as some suspected, of the plague. Others of the Eleven Members went to other parts, and some of them retired into their countries, and there lived privately; Mr. Hollis continued divers years after in Britany in France." Whitelocke.

—The said Denham was called in, and the House demanded of him how he came to escape; he answered, that passing his word as he was a gentleman, to be a safe prisoner, he gave him his liberty, and thereupon he escaped. The house upon debate hereof, ordered that the said Denham should be committed: And ordered further, That all the ports in England and Wales should be stopped for apprehending of the said Mr. Nicholls; and this Order to be sent to them with speed: Also it was ordered, that the Pass formerly granted by the Speaker, should be revoked and made void.

Letters from France tell of six of the Eleven Impeached Members landed at Calais, but that sir Philip Stapleton soon after his landing, died at Calais of the plague, the rest are gone to Flushing, very much sad at the sudden death of sir Philip.

September 4. The House of Commons this day, proceeded further in the Report from the Committee for examination of the late Tumult and Force upon the Parliament, and the whole day was spent in this particular business; something was first considered of in the case of Mr. Baynton; and this, as a leading case, brought on the Report, how far some other Members of that House had engaged, or were concerned in the late Tumult or Design of a new War; and upon this debate several of the Impeached Members were concerned; and at last it was voted and ordered, that summons from the house of commons should be made out for Mr. Denzil Hollis, sir William Waller, sir John Clotworthy, major general Massey, colonel Walter Long, and Mr. Anthony Nicholls, members of that house, to attend the house the 16th Oct. next, to answer such things as shall be objected against them.—It was also, upon debate, further ordered, That Mr. Glynn, the Recorder of London, should attend the house on Monday next, to answer as aforesaid.—And that sir John Maynard should also attend the house on Tuesday next; and the Sergeant at Arms attending that house had direction to send notice forthwith of the said Orders, at their respective houses or lodgings.

September 6. Mr. Glynn, Recorder of London, attended the House of Commons, according to the Order on Saturday last, to answer the Charge against him: but the house being then very attentive about the business of sending the Propositions to the King, Mr. Recorder was put off till the next day.

September 7. John Glynn, esq. Recorder of London, and sir John Maynard, appeared in the House of Commons, when the Speaker informed them, That there had been a Report made, in which were some things that highly concerned them, this being read, Mr. Glynn instantly gave a general Answer to many of the matters objected against him, and a particular one to others. After which, the question being put, Whether John Glynn, esq. Recorder of London, be discharged from being a Member of this house? it passed in the affirmative,

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58 against 52, and he was discharged accordingly. Sir John Maynard refused to answer to any of the Informations that were read against him, but prayed that he might have counsel assigned him, and withdrew. On which it was resolved, without division, "That sir John Maynard be expelled the house and committed prisoner to the Tower." Resolved also, "That an Impeachment of High Treason be prepared and brought in against him."

September 8. Sir John Maynard was carried prisoner to the Tower, according to the order yesterday; and Mr. Recorder received his Sentence in the commons house; but it was ordered that his commitment to the Tower should be dispensed withal for a week, that he may have time to sort and deliver up his Papers and Writings in relation to his place of Recorder of London, or to his clients at law, and to remain in custody.

September 16. The Commons resumed the debate concerning the Impeached Members, and ordered an Impeachment of high crimes and misdemeanors to be brought in against Mr. Recorder Glynn, prisoner in the Tower.

October 27. An Impeachment against sir John Maynard was read, and assented to.

January 27, 1648. The House considered of the Charge against the Eleven Members, and in particular that against sir John Maynard, which was formerly read in the said house. The house ordered to prosecute the said Charge; and to that purpose ordered the same to be sent to the lords.

The House then voted, That Mr. Hollis should be disabled ever to sit as a member of that house during this present parliament. The like Order was made against sir William Lewis, Mr. Nicholls, sir John Clotworthy, sir William Waller, col. Massey, and col. Long.

January 29. The House of Commons, according to the former order, considered further of the business concerning the Eleven Impeached Members of the house of commons, and the Seven Members of the house of peers, one whereof was anew impeached on Thursday last. This business admitted of much debate; and, upon the result of all, it was resolved upon and voted, That the rest of the Eleven Members of the house should be impeached of High Treason, in the same manner as sir John Maynard was on Thursday last; except sir William Lewis, who, for some reasons extraordinary, was to be impeached only of High Crimes and Misdemeanors.

The House then considered of the place of Mr. Glynn, (who is one of the Eleven) late Recorder of the city of London, and ordered that one Mr. Steele should be chosen in his place.

February 1. The Articles of Impeachment against sir John Maynard were carried up to the house of lords, and are as follows: viz.

ARTICLES OF IMPEACHMENT of the Commons in parliament assembled, against sir JOHN MAYNARD, Knight of the Bath, whereby he stands charged of High Treason, and other high Crimes and Misdemeanors.

I. That the said sir John Maynard hath, maliciously and traitorously, endeavoured, combined, and conspired to subvert the freedom of parliament.

II. That, upon the 30th of July last, and divers days before and since, he, the said sir John, at the Guildhall, and other places within the cities of London and Westminster, and county of Middlesex, hath, maliciously and traitorously, plotted and endeavoured to raise and levy war; and accordingly, then and there, hath, maliciously and traitorously, raised and levied war against the parliament, king, and kingdom.

III. That whereas, on the 26th of July last past, a great company of Reformado officers, soldiers, apprentices, and other dissolute and desperate persons, (many whereof have been in arms against the parliament) being tumultuously assembled at Westminster-Hall, and parts adjacent, within the city of Westminster and liberties thereof, did, by a most horrid force and violence, possess themselves of the doors and passages of the houses of parliament in Westminster aforesaid, (the members of the said houses then sitting in parliament) and did then and there, contrary to the honour and freedom of parliament, threaten, and, for divers hours, imprison, the said members so sitting in parliament; and, by the said menacing imprisonment, and violence, did force the said houses to pass an Ordinance of parliament, for the revoking and making void an Ordinance made the 23d of July abovesaid, concerning the Militia of London, and for the constituting of sir John Gayer, kn. Tho. Adams, James Bunce, Aldermen, and others, citizens of the city of London, a committee of the Militia of the said city, and parts adjacent within the lines of communication: and did likewise, then and there, forcibly enter into the said houses of parliament, and forced the members of the said houses to pass such Votes as they, the said tumultuous persons, then and there required; and did then and there violently assault the persons of the Speakers, and divers members of both houses then attending on the parliament; and, by their violent menacings and assaults, did force the said Speakers, and divers members, from their attendance in parliament. And whereas sir Tho. Fairfax, kn. and the army under his command, was formerly, by both houses of parliament, raised and maintained, and is still continued, for the safety and defence of the parliament and the kingdom; and the said sir Tho. Fairfax and the said Army, bearing of the said horrid force and violence offered to the said houses of parliament as aforesaid, did march towards the cities of London and Westminster to suppress the said tumults, and to restore the said houses of parliament, and the members thereof, to their just freedom, safety, and honour; and to secure the said houses of parliament from the like violence and traitorous attempts for the future, he, the said sir J. Maynard, knowing of the said horrid force and

violence, and that the said Ordinance, for the Militia of London, so by force obtained as aforesaid, was void and null, and that the said sir Tho. Fairfax, and the Army under his command, were marching towards the cities of London and Westminster, for the intents and purposes aforesaid, he, the said sir John Maynard, for the better advancing of his traitorous purposes, designs, and actions as aforesaid, did, on the 30th of July aforesaid, and divers days since, with Denzil Hollis, and Walter Long, esqrs. Francis lord Willoughby of Parham, col. Row. Alassey, col. Sydenham Pointz, and divers others, meet at the Guildhall aforesaid, and other places within the cities of London and Westminster, and county of Middlesex; and did, then and there, sit with, and traitorously consult, abet, and maintain the said sir John Gayer, alderman James Bunce, and others of the said pretended Militia, in putting in execution the said pretended Ordinance for the said pretended Militia of London, so by force obtained as aforesaid; and, together with the said Denzil Hollis, Walter Long, Francis lord Willoughby of Parham, sir John Gayer, alderman James Bunce, and others, did traitorously and maliciously plot, contrive, and order the raising of another Army to embroil the kingdom in a new and bloody war; and did, traitorously and maliciously, at the time and place, and with the persons aforesaid, plot, contrive, and order the levying, raising, listing, arming and arraying several forces, both of horse and foot, for the maintenance of the said new and bloody war against the king, parliament, and kingdom, and to ruin and destroy the said Army under the command of the said sir Tho. Fairfax, raised for the defence of the parliament and kingdom as aforesaid, and to prevent and hinder them from vindicating the honour and safety of parliament as aforesaid, and the said several forces, both of horse and foot as aforesaid, were listed, raised, and levied accordingly; sundry of them having been aiding and abetting to the abovesaid horrid force and violence amongst the said soldiers, officers, and tumultuous persons as aforesaid, upon the said 26th of July last past, against the said houses of parliament as aforesaid.

IV. And, in further pursuance of the said traitorous purposes and designs, he the said sir John Maynard, knowing of the said horrid force and violence, did, together with the said Denzil Hollis, Walter Long, and Francis lord Willoughby of Parham, on the 30th of July aforesaid, at the Guildhall, and other places aforesaid, traitorously order and appoint the Reformado officers, which, by former Ordinance of parliament, were commanded to depart forth of the lines of communication, to rendezvous in a certain place in Westminster, and liberties thereof, commonly called St. James's Fields, to be listed, and put into a regimental way; to the intent to be arrayed, armed, and employed for the destruction of the Army under the command of sir Tho. Fairfax,

and all such as did adhere to them, and did then and there, traitorously order, direct, and cause to be raised and levied 18 regiments of the Trained Bands of the cities of London and Westminster, and the Auxiliary Bands, and all other forces of the said cities, and the sailors, watermen, and seamen within or near the river Thames, to be mustered, arrayed, armed, and put into a warlike posture, to be employed in the said war, traitorously contrived, levied, and raised by him, the said sir John Maynard, and the persons abovenamed, against the king, parliament and kingdom, and the said Army of the Parliament, under the command of sir Tho. Fairfax.

V. That, on the said 30th of July last, he the said sir John Maynard, at the Guildhall aforesaid, together with the said Denzil Hollis, Walter Long, esqrs. Francis lord Willoughby of Parham, and others, in pursuance of his said traitorous plots and contrivances, did traitorously order, command, and appoint the raising, seizing, and listing of all horses, geldings, and mares within the cities of London and Westminster, and lines of communication, and ten miles distant, to be employed in the said new and bloody war, so as aforesaid traitorously raised and levied by him, and the persons in this Article afore-mentioned, against the king, parliament, and kingdom.

VI. The said sir John Maynard, with other the persons afore-named, at the Guildhall aforesaid, upon the 3rd of August last, and divers days before and since, did traitorously order and command the officers of the Ordnance within the Tower of London, to issue 400 barrels of powder, and 4,000 muskets and other arms, ammunition, and provisions for war, formerly provided by the said houses of parliament for the defence of the kingdom, and to furnish the said Army of the parliament under the command of sir Thomas Fairfax, and the Navy at sea appointed for the safety and defence of the kingdom; to be employed and used for the arming and arraying of the said Reformed officers and soldiers, raised and listed as aforesaid for the maintenance of the said new and bloody war, so as aforesaid traitorously plotted, contrived, and fomented by him and the persons aforesaid, and to be employed, for the destruction of the said parliament's Army under the command of sir Thomas Fairfax, and the subjects of the kingdom adhering to, and joining with, the said Army of the king, parliament, and kingdom.

VII. That whereas sir John Maynard, with others afore-named, in pursuance of their said traitorous and malicious designs to embroil the kingdom in a new and bloody war, and to fight against the parliament's Army, then marching up towards London, for the purposes before recited, did, at the time and place, abovesaid, cause a Declaration, (framed by some person within the city of London, containing matter of reproach and scandal of the Army, doing their duty in the service of the parliament; and reflecting on the authority and freedom of par-

liament in several of their Ordinances, lawfully and duly passed; and abetting the Engagement declared against by the said houses of parliament the 23rd of July then instant, as a traitorous and seditious design of divers ill-affected persons in and about London, and parts adjacent; and to bring in the king, without security and satisfaction first given to both kingdoms, as was insisted on by the parliaments of both kingdoms; and tending to engage the rest of the kingdom with them in the said war against the parliament and Army) to be published in all or most of the churches and chapels within London and lines of communication, in or upon the 1st of August last past—By all which designs, endeavours, and actions, he, the said sir John Maynard, hath traitorously laboured to ruin and destroy the king, parliament and kingdom; for all which they do impeach him of High Treason against the king, his crown and dignity.

And the said Commons, by protestation, saving to themselves a liberty of exhibiting, at any time hereafter, any further Accusation or Impeachment against the said sir John Maynard, and also of replying to the Answers that the said sir John Maynard shall make to the said Articles, or to any of them, and of offering further proof of the premises, or any of them, or of any other Impeachment or Accusation that shall be exhibited by them, as the cause shall, according to the course of parliament, require, do pray that the said sir John Maynard may be put to answer all and every of the premises; and that such proceedings, examinations, trial, and judgment may be upon every of them had and used, as is agreeable to law and justice.

Feb. 3. The Lords made the following Order: "That the lieutenant of the Tower do bring sir John Maynard to the bar, on Saturday morning next, to receive his charge of High Treason, and other High Crimes and Misdemeanors, brought up from the House of Commons against him."

Feb. 5. The Lieutenant of the Tower having brought sir John Maynard to the bar of the House of Lords, the Speaker told him, "That the lords did send for him to appear this day to receive his Articles of High Treason, and other High Crimes and Misdemeanors, brought up from the Commons against him:" and commanded him to kneel at the bar as a delinquent. Sir John refused; but desired that the doors of the house might be set open for any body to come in that would, and this house not be made private, as the Council Table was: and he said, This way of Articles was not a way of proceeding of this kingdom; therefore he, being a commoner of England, and a free-born subject, ought to be tried as a commoner, by Bill or Indictment in the inferior courts of justice; and desired counsel to speak to it. He also, being again commanded to kneel as a delinquent, refused, saying, "He did not come to make bargains." Upon this the house com-

manded sir John to withdraw, and the lords ordered that he should be fined 500*l.* for his refusal, in not submitting himself to the usual and ordinary way of proceeding of their house, upon Articles brought from the Commons against him.

Then the Lords commanded sir John to be brought in again, and the Speaker told him, "That their lordships had fined him 500*l.* for his refusal, in not submitting himself to the usual and ordinary way of proceeding of that house, upon Articles brought up from the Commons against him; and let him know that the lords had ordered, That the Articles brought up from the Commons, the 28th of January last, should be read." He refused to hear them read. However the Articles being read, the Speaker told him, "Now his Articles having been read, he might have a copy of them if he would; and that he is to put in his Answer to them within fourteen days." He replied, "He did not hear them read, and protested against the reading of them; and that these Articles brought up against him were not believed by them that drew them up: and he said (comparing this proceeding against him with the proceedings of the Council Table) that he did admire the justice of the Council Table, in regard of the arbitrary proceedings against him here." After this he was commanded to withdraw, and the Lords ordered that the said sir John being impeached by Articles of the Commons assembled in Parliament, whereby he stands charged of High Treason, and other High Crimes, Misdemeanors, and Offences, shall stand committed to the Tower, there to be kept in safe custody until the pleasure of their house be further signified.—A warrant was immediately issued in that behalf; and it was ordered that the Fine of 500*l.* imposed upon him, be presently estreated into the exchequer.

Feb. 8. This day the House of Peers received from sir John Maynard another Protestation, in which he gives them to understand he ought to be tried by a Jury, for which he quotes Magna Charta, and the lord Coke, and that he may except against thirty-five of the Jury, without shewing cause, that none are to be his Judges that have acted in the same, whereof he is accused; with much more to the same purpose. The Lords ordered he bring in his Answer by Saturday next.

March 2. The House of Commons ordered, That a Writ should be issued for electing a Burgess in the place of Mr. Anthony Nicholls, one of the Eleven Impeached Members, who is disabled ever to sit as a Member of Parliament.

March 3. The House ordered, That Mr. Speaker should grant his Warrant to the clerk of the crown for election of a Burgess to serve in parliament for the town of Maldon in the place of sir John Clotworthy, one of the Eleven Impeached Members.

April 12. Sir John Maynard put in his Answer to the House of Peers, pleading Not Guilty to the charge of High Treason framed against him.

May 23. The Lord Mayor, Aldermen, and Commons of the City of London, in Common Council assembled, presented a Petition to the House of Commons, praying, amongst other things, "That the Aldermen now in the Tower, the Recorder, and the rest of their fellow citizens restrained upon the same occasion, may be discharged and restored; whereby the city may be the better united, their hands strengthened, and they made more serviceable to the parliament and city for their preservation and safety; which they shall endeavour, to the utmost of their power and abilities."

The Lords returned them thanks, and gave them assurance, "To take all opportunities for a speedy Settlement of a safe Peace in both kingdoms, according to the Covenant, and endeavour to prevent a new bloody war, That upon the Impeachment sent from the Commons, they proceeded no otherwise than as usual in course of parliaments: the Recorder, and the rest not impeached, they will endeavour their release."

Mr. Speaker, by the command of the House of Commons, acquainted them, "That as to the business concerning the Aldermen in the Tower, it is a business of very serious and important consideration; they have therefore resolved to resume the debate of it on this day seaventhnight."

The Commons, upon further debate of this Petition, ordered, "That Mr. Glynn, Recorder of the city, should be discharged from any proceedings upon the Vote for his Impeachment."

June 3. The House of Commons considered of the business of the Eleven Members, and ordered, "That the Votes, whereby Denzil Hollis, sir John Maynard, knight, sir William Waller, knight, sir William Lewis, knt. colonel Edward Massey, sir John Clotworthy, knight, Anthony Nicolls, esq. and Walter Long, esq. stand accused by this house, be fully discharged."

June 6. The Lords concurred with the Commons, and resolved not to proceed any further against the Eleven Members.

June 7. The House was informed, That many of the Inhabitants of Westminster were at the door; they were called in and presented a Petition to the house, wherein they desired, "That Mr. Glynn, who was formerly chosen to serve in parliament for them, might be re-admitted into the house." The House hereupon ordered, "That the former Vote for disabling Mr. Recorder Glynn to be a member of the house of commons, should be henceforth revoked and made void."

June 19. The Case of Mr. Walter Long (one of the Eleven) was reported; and the house voted to receive him in again. Upon the case of sir John Clotworthy, in whose stead is since chose Mr. Mildmay, the house voted, That it be referred to the Committee for Privileges to examine, and make report to the house.

June 26. The Committee of Privileges made

report to the house, of the Case of sir John Clotworthy (one of the Eleven) and Mr. Mildmay, and after some debate it was voted, "That the election of Mr. Mildmay was void, and that the former order, prohibiting sir John Clotworthy and Mr. Mildmay to sit in the house till farther order, be revoked; and that the said sir John be re-admitted."

On December the 6th, 1648, the day of colonel Pride's *Purge*, col. Whaley presented to the House of Commons a Paper bearing the following title, "To the hon. the Commons of England in parliament assembled, The humble Proposals and Desires of his excellency the lord Fairfax and the general council of officers, Dec. 6, 1648, in order to a speedy prosecution of justice, and the settlement formerly propounded by them." The preamble and two first demands are as follow: "Having with others, for a long while sadly beheld and tasted, in your proceedings, the miserable fruits of councils divided and corrupted by faction and personal interest, even to the neglecting, betraying, and casting away all public good; to the lengthening out of endless troubles, burdens, and damage; to the continuance and widening of that issue of blood, whereby these nations have been so long polluted and consumed; and to the perpetual hazard, bondage, and destruction of them at last: and seeing no other or better way, we propound and demand as followeth: 1. Whereas Denzil Hollis, esq. Lionel Copley, esq. major-gen. Massey, and others of your members whose names you well know, were, in 1647, impeached by us for Treason, or for high Crimes and Misdemeanors, in relation to the treasonable Engagement in the city of London, the violence then done upon the parliament; the levying of a new war, and other evils in maintenance and prosecution thereof; and, upon clear proofs against them, were, by your censure, expelled the house, and disabled from further trust therein; and, upon new writs issued out, new members were chosen and returned in some of their places; and yet, by the prevalence of their faction, when in the last summer's wars, divers

faithful members were engaged abroad upon necessary public service, and others, through malignant tumults and disturbances, could not safely attend the house, the same persons were afterwards re-admitted to sit in the house and vote as formerly, without any trial or satisfaction in the things whereof they were accused: we demand that all those members so impeached may be forthwith secured, and brought to justice; and such others as are of their faction may be secluded from the house. 2. Whereas, by the confederacy of major-gen. Brown, now sheriff of London, with the said impeached members and others, the Scots were invited and drawn in to invade this kingdom the last summer; insomuch as when, upon their actual invasion, the house proceeded to declare them enemies, and those that adhered to them traitors; yet the said confederates, and other treacherous members, to the number of 90 and odd, as upon the division of the house appeared, did, by their counsels and votes, endeavour to hinder this house from declaring against their confederate invaders: we desire that the said major-gen. Brown may be also secured and brought to judgment; and that the rest of the 90 and odd persons, dissenting against the said Vote, may be excluded the house."

And on the 12th of the same month, The Commons being met, pursuant to adjournment, they proceeded upon the Proposals and Desires of the Army, which were read a second time; but the result, contained in several clauses, was obliterated by an Order of March the 2nd, 1659: however, these Votes we are enabled to supply, the house having ordered them to be printed and published about a month after the passing of them: Resolved, "That the Votes of the 7th and 8th of June last, 'For revoking the Orders of the 7th and 9th Sept. and the 27th Jan. 1647, disabling commissary Lionel Copley, and also Denzil Hollis, esq. sir Philip Stapylton, &c. from being members of this house,' was of a dangerous consequence, tending to the destruction of the justice and peace of this kingdom; and is hereby repealed."

178. The Case of DAVID JENKINS, esq. a Welsh Judge, for publishing Seditious Books,\* and for passing Sentence of Death on Persons for not assisting against the Parliament: 23 CHARLES I. A. D. 1647. [6 and 7 Rushw. Coll. Whitelocke's Memorials. Jenkinsius Redivivus.]

**BRIEF** Notices of different particulars of this Case, are given detachedly by Rushworth and Whitelocke; and the Judge himself has left us some very bold and spirited accounts of his bold

and spirited carriage, and arguments in the course of it.—Rushworth's Account is as follows:

June 22, 1647. The House of Commons this

vers books, answered, and the truth thereby more fully cleared," "The Army's Indemnity," "A Discourse touching the inconveniences of a long-continued Parliament," "An Apology

\* There remain of Judge Jenkins's Works, (besides those, relating to this Case, which are here inserted), "Lex Terra," "Some seeming Objections of Master Prynne's, scattered in di-

day had debate of the business against Judge Jenkins, Prisoner in the Tower, and appointed Mr. Solicitor St. John to prosecute against them in the King's-Bench, according to Law, this Term, and the Publishers of his Books. And Mr. Serjeant Jermin, Mr. Bradshaw, and Mr. Pryn ordered to prepare the Matter of Fact against him, and Mr. Beck to be the Solicitor.

January 14, 1648. The House this day ordered, That Judge Jenkins be this term brought to his Trial, and that the Charge against him be presented effectually. \*

February 15. A Report was made of the carriage of Judge Jenkins at the Chancery-Bar on Monday last, whither he was brought as Defendant, upon an action at law for Monies, and being demanded to give in his Answer, he gave in a Paper, "That he could not, nor ought, nor would not submit to the power of that Court;" and in sum said, "That it was no Court, and their Seal was counterfeit," with much more to that purpose: upon which the House ordered a Committee to draw up an Ordinance of Impeachment against him for High Treason, and to dispatch the same forthwith.

February 17. An Ordinance was reported to the House for the attainting of Judge Jenkins of High Treason, which was read, and much debate had thereon, and ordered to commit it to a Committee.

February 19. The Ordinance for attainting of Judge Jenkins of High Treason, was again

for the Army, touching the eight Queries." They are all written in a high strain of loyalty, and with bold and bitter enmity to the Parliament. As Mr. Luders has expressed it, "Judge Jenkins, who was imprisoned by the Parliament for his enmity to them, employed his hours of confinement, in collecting together the various acts of Law-Tyranny which they had practised." See the note to St. John's Argument in Lord Strafford's case: ante, vol. 3, p. 1487. The Parliament, on the other hand, were inveterate in their hostility against him, and to the last, insisted that he should be exempted from pardon: Upon this point, Mr. Pryn, in his celebrated Speech on "the King's Answer to the Propositions of both Houses" says of Judge Jenkins that he "is aged, scarce worth your execution." See 3 Cobb. Parl. Hist. 1170.

\* "Friday, 14 Jan." says Clement Walker, "After a long debate it was ordered, That Sir Lewis Dives, Sir John Stowell and David Jenkins be tried as Traytors at the King's Bench; the Grand Jury had found the Bill against Jenkins. Mr. Solicitor, &c. appointed to manage this business, but Jenkins is so great a lawyer, that the Solicitor durst not venture upon him, the long sword being more powerful in his mouth than the law; wherefore the Solicitor found an error in the indictment, turned him back again upon the house to be impeached before the Lords, to whose jurisdiction he pleaded; so the Solicitor put the affront from himself upon the houses."

reported to the house, and the Proofs upon the Matters of Fact mentioned therein, were fully debated; and upon the whole, the house being satisfied with the proofs, passed the Ordinance, and the Lords concurrence to be desired.

February 21. This day the House of Commons, according to former order, had before them Judge Jenkins; he being brought in by the Serjeant at Arms, was commanded to kneel at the Commons bar, but very obstinately refused, and with many bold expressions denied the authority of parliament, charging them with wronging the king, wishing the laws might be protected, but that there could be no laws without the king; terrifying the parliament with the king's great issue, using many other high words in derogation of the parliament and their authority; in short, his whole deportment before the house, was the very same with his carriage at the Chancery bar, the last term.

The House then commanded him to withdraw; they had in debate his obstinate behaviour and words, which they voted to be "a high Breach of Privilege of the House," and fined him 1,000*l.* for his Contempt.

Afterwards he was again brought before the House, when his Charge was read unto him, which contains, "That he had condemned, or past sentence upon men to be hanged, drawn and quartered, for not assisting against the Parliament: That he took up arms himself a Judge, and a colonel was ordinary; that he stirred up others to levy war, and assist against the parliament; and accused the parliament of, and charged them with counterfeiting the great seal." Being asked what he had to say, He answered, That they had no power to try him; and would give no other answer.

After this, the Witnesses to prove the matter of fact in the said Charge, were called in; and Mr. Speaker, according to the order of the house, acquainted them with the danger of giving false Evidence to the house, to sway the judgment of that honourable house, and thereby bring the guilt of innocent blood upon themselves.

They were also required to give their Evidence concerning the Carriage of Judge Jenkins at the Chancery bar, and of his throwing in a scandalous Paper into that court; upon all which many witnesses were called into the house, to prove the matter of fact contained in the said Charge, which was fully done; and, the house being satisfied with the said Evidence, they proceeded to the reading of the Ordinance of Impeachment against him the third time, which was assented unto, and ordered to be sent to the lords for their concurrence.

May 11. The Lords were this day desired by Message from the House of Commons, to pass the Ordinance against Judge Jenkins.

November 7. The House fell into debate concerning the rest of the seven exempted persons, and voted, That Judge Jenkins be one of the Seven excepted from Pardon.

The following are the Particulars noted by Whitelocke.

May 11, 1647. A printed Paper called "Judge Jenkins his Vindication," and another called "Dudley Digges of the Illegality of Subjects taking Arms against their Sovereign," was referred to the Committee of Complaints, and the Printers and Publishers thereof to be tried at the King's Bench.

June 22. Order for proceedings against Judge Jenkins; and Mr. Solicitor St. John, serjeant Jermyn, Mr. Bradshaw, and Mr. Prynne to prosecute him.

January 14, 1648. Orders for remanding the earl of Cleveland to the Tower, and for sir Lewis Dives to be kept in safe custody, and for Mr. Solicitor to prosecute him, and sir Jo. Stowel, and Judge Jenkins to Trial next term.

February 15. Upon information, That Judge Jenkins being brought as a Defendant to the Chancery bar, and required to answer a Bill there against him, for a foul Cheat and Breach of Trust (as some alleged); Judge Jenkins told the court, "That he ought not, nor would submit to the power of that court, for that it was no court, and their seal was counterfeit." The House referred it to a Committee to draw up an Impeachment of Treason against him.

February 19. Upon bearing of Proofs, the Ordinance passed, to be sent up to the Lords, for attainting of Judge Jenkins.

February 21. Judge Jenkins brought to the bar of the House, refused to kneel, denied their authority, told them, "That they wronged the king, willing that the Laws might be protected, that there could be no law without a king," and used high expressions against the parliament, and their authority.

The House fined him 1,000*l.* for his Contempt.

At another time when his Charge was read against him at the bar, "For giving judgment of death against men for assisting the parliament, and for being himself in Arms against the parliament, and persuading others to do the like, and for denying the power of the parliament, &c." and asked what he had to say thereunto, he told them, "That they had no power to try him," and he would give no other answer.

After many Witnesses examined in the house, to prove the matters of fact contained in the Charge, the House passed the Ordinance for impeaching of Judge Jenkins, and ordered it to be sent up to the Lords.

April 18. The Commons desired the Lords to proceed upon the impeachments against the Seven Lords, and against the citizens, and against Judge Jenkins.

May 8. The Lords were put in mind to proceed against Judge Jenkins.

November 7. The House voted, That Judge Jenkins shall be one of the Seven Persons excepted from Pardon.

March 14, 1649. Upon a Report from the council of state, the House of Commons voted,

That sir Jo. Stowell and Judge Jenkins be tried for their life.

July 10, 1650. An Act passed for the trial of sir John Stowell, David Jenkins, Walter Slingsby, Brown Bushell, William Davenant, and C. Gerrard, by an High Court of Justice.

October 15, 1651. Several Petitions from Mr. Jenkins, Mr. Case, and others who were in the Conspiracy with Mr. Love, by way of humble Acknowledgment and Submission.

The Parliament pardoned them all, and ordered the Commissioners of the Great Seal to pass their Pardons.

Judge Jenkins has left us the following Articles written and published by himself, relative to the Proceedings against him:

#### THE VINDICATION OF JUDGE JENKINS, PRISONER IN THE TOWER, APRIL 29, 1647.

I was convened upon Saturday the 10th of this month of April before a Committee of the House of Commons, wherein master Corbet had the chair; and I was there to be examined upon some questions then to be propounded to me; to which questions I refused to give any other Answer than that which was set down in a Paper I then delivered to the said Mr. Corbet, which followeth in these words:

"Gentlemen; I stand committed by the House of Commons for High Treason, for not acknowledging nor obeying the power of the two Houses, by adhering to the king in this war; I deny this to be Treason, for the supreme and only power by the laws of this land is in the king: If I should submit to any examination derived from your power, which by the Negative Oath stands in opposition to the king's power, I should confess the power to be in you, and so condemn myself, for a Traitor, which I neither ought nor will do.

"I am sworn to obey the King, and the laws of the land; you have not power to examine me by those laws, but by the king's writ, patent or commission: if you can produce either thereof I will answer the Questions you shall propound; otherwise I cannot answer thereto, without the breach of my Oath, and the violation of the laws, which I will not do to save my life.

"You yourselves, all of you this Parliament, have sworn that the king is our only and supreme governor: your Protestation, your Vow, and Covenant, your solemn League and Covenant, your Declarations, all of them published to the kingdom, that your scope is the maintenance of the laws; those laws are and must be derived to us, and enlivened by the only supreme governor, the fountain of justice, and the life of

\* Ludlow, after relating the Judgment and Execution of king Charles, says, "Judge Jenkins, sir John Stowell, and divers other persons who were prisoners, and had carried themselves very insolently, now finding the Parliament to be in earnest, began to come to a better temper."

the law, the king. The Parliaments are called by his writs, the Judges sit by his patents, so of all other officers, the cities and towns corporate govern by the king's Charters; and therefore since by the law I cannot be examined by you, without a power derived by his majesty, I neither can, nor will, nor ought you to examine me upon any questions, but if as a private gentleman, you shall be pleased to ask me any questions, I shall really and truly answer every such question, as you shall demand.

April 10, 1647. DAVID JENKINS."

This Paper hath been mis-represented to the good people of this city by a printed one styling it my Recantation, which I own not; and besides is in itself repugnant: (just like these times) the body falls out with the head. To vindicate myself from that Recantation, and to publish to the world the reality of the Paper then delivered to Mr. Corbet, and the matter therein contained, I have published this ensuing discourse.

No person who hath committed Treason, Murder, or Felony, hath any assurance at all for so much as an hour of life, lands or goods, without the king's gracious pardon, 27 H. 8, chap. 24.

The King is not virtually in the two houses at Westminster, whereby they may give any assurance at all to any person, in any thing, for any such offence.

1. The House of Commons have declared to the kingdom in their Declaration of the 28th of November last, to the Scots Papers, p. 8. "That the king at this time is not in a condition to govern." No person or thing can derive a virtue to other men, or things, which itself hath not; and therefore it is impossible that they should have a virtue from the king to govern, which they declare he hath not himself to give.

2. The Law of the land is, "That no person in any parliament hath a voice in the House of Commons, but that he stands a person to all intents and purposes as if he had never been elected or returned, if before he sit in the house, he take not his oath upon the holy Evangelists, that the king's majesty is the only and supreme governor over all persons in all causes." [5 Eliz. c. 1.] All the members of the said house have taken it, and at all times as they are returned do take it; otherwise they have no colour to intermeddle with the public affairs. How does this solemn and legal oath agree with their said Declaration, "That the king is in no condition to govern?" By the one it is sworn, he is the only supreme governor, by the other, that he is not in a condition to govern.

3. The oath is not, that the king was or ought to be, or had been, before he was seduced by ill council, our only and supreme governor in all causes over all persons; but in the present tense, "that he is our only and supreme governor," at this present in all causes and over all persons. So they the same per-

sons swear one thing, and declare to the kingdom the contrary of the same thing, at the same time, in that which concerneth the weal of all this nation.

4. The Ministers in the pulpits do not say, what they swear in the house of commons. Who ever heard since this unnatural War, any of their presbyters attribute that to his majesty which they swear? The reason is this, their oath is taken at Westminster amongst themselves: that which their ministers pray and preach, goes amongst the people. To tell the people that the king is now their only and supreme governor in all causes, is contrary to that the houses do now practise, and to all they act and maintain. The two Houses forsooth, are the only and supreme governors in default of the king, for that he hath left his great council, and will not come to them, and yet the king desires to come, but they will not suffer him, but keep him prisoner at Holmby: so well do their actions and oaths agree.

5. They swear now, king Charles is their only and supreme Governor; but with a resolution at the time of the Oath taking, and before and after, that he shall not be only or supreme governor, or only and supreme, but not any governor at all: for there is no point of government, but for some years past they have taken to themselves, and used his name only, to abuse and deceive the people.

6. That this virtual power is a mere fiction, their Propositions sent to Oxford, to Newcastle, to be signed by the king, do prove it so. What needs this ado, if they have the virtual power with them at Westminster?

7. To affirm that the King's power (which is the virtue they talk of) is separable from his person, is High Treason by the law of this land; which is so declared by that learned man of the law, sir Edward Coke; so much magnified by this present parliament, who in the 7th part of his Reports in Calvin's case, fol. 11, saith thus. "In the reign of Edward the 2nd, the Spencers the father and son, to covet the Treason hatched in their hearts, invented this damnable opinion, that homage and oath of allegiance was more by reason of the king's crown, (that is of his politic capacity) then by reason of the person of the king: upon which opinion they inferred three execrable and detestable consequences. 1. If the king do not demean himself by reason in the right of his crown, his lieges are bound by oath to remove the king. 2. Seeing that the king could not be reformed by suit of law, that ought to be done *per asperum*, that is by force. 3. That his lieges be bound to govern in aid of him, and in default of him; all which were condemned by two parliaments, one in the reign of Edw. 2, called *Exilium Hugonis le Spencer*; and the other in anno 1 Edw. 3, chap. 2."\*

And that the natural body and politic makes one indivisible body, and these two bodies in-

\* See No. 4, vol. 1, p. 25).

corporate in one person make one body and not divers, is resolved as the law of England, 1 Eliz. Ploydon Co. fol. 113, by Sir Corbet Catlin, Lord Chief Justice of England, Sir James Dyer, Lord Chief Justice of the Common Pleas, the lord Sanders, lord chief baron of the Exchequer, by the rest of the Judges, viz. Justice Rastall, Justice Brown, Justice Corbet, Justice Weston, baron Frevyl, Carus, and Powtrel serjeant to the queen, Garrard attorney general, Carell attorney of the Dutchy, Plowden the most learned man of that age, in the knowledge of the law, and customs of the realm.

8. The law in all ages without any controversy is and hath been: that "no act of parliament binds the subjects of this land without the assent of the king, either for lands, goods, or fame."\* No man can shew any syllable, letter, or line to the contrary in the books of the law, or printed acts of parliament, in any age in this land: if the virtual power be in the Houses, there needs no assent of the king's. The stiles of the Acts printed from 9 Hen. 3, to 1 Hen. 7, were either "The King ordains at his parliament," &c. or "the king ordaineth by the advice of his Prelates and Barons, and at the humble Petition of the Commons, &c." In Hen. 7, his time the stile altered, and hath since continued thus; "It is ordained by the king's majesty, and the lords spiritual and temporal, and commons in this present parliament assembled:" so that always the assent of the king giveth the life to all, as the soul to the body; and therefore our law-books call the king, "the Fountain of Justice, and the life of the law."

9. Mercy as well as justice, belongs by the law of the land only to the King. This is confessed by Mr. Prynne, and it is so without any question: the king can only pardon, and never more cause to have sufficient pardons than in such troublesome times as these, and God send us pardons and peace: none can give any Pardon, but the king, by the law of the land: "The whole and sole power of pardoning treasons and felonies belongs to the king" are the words of the law, and it is a delusion to take it from any other, and utterly invalid, 27 Hen. 8, cap. 24.

10. Queen Elizabeth summoned her first parliament, to be held the 23d of Jan. in the first year of her majesty's reign; the lords and commons assembled by force of the same writ; the 21st day the queen fell sick, and could not appear in her person in parliament that day, and therefore prorogued it until the 25 of the same month of January: "resolved by all the judges of England, that the Parliament began not the day of the return of the Writ, viz. the 23d of Jan. when the lords and com-

\* 9 Hen. 3, Magna Charta. So in every age till this day, and in every King's time, as appears by the acts in print, 1 part of the Institut. Sect. 234, in fine, where many of the Law books are cited, 7 Hen. 7, 14, 12 of Hen. 7, 20.

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mons appeared, but the 25th of the said month, when the Queen came in person;? which sheweth evidently that this virtual presence is a meer deluding fiction that hath no ground in law, reason, or sense. They have the king now a prisoner at Houlmy, with guards upon him, and yet they govern by the virtual power of their prisoner. These are some few of the causes and reasons which moved me to deliver that Paper to Mr. Corbet, which I am ready to justify with my life, and should hold it a great honour to die for the honourable and holy laws of the land. That which will save this land from destruction, is, an Act of Oblivion and his majesty's gracious general Pardon, the Soldiers their Arrears, and every man his own, and truth and peace established in the land, and a favourable regard had to the satisfaction of tender consciences.

April 29, 1647.

DAVID JENKINS.

The CORDIAL of Judge Jenkins; for the good people of London. In Reply to a thing, called, "An Answer to the Poysonous Seditious Paper of Master David Jenkins; By H. P. Barister of Lincoln's Inn:" Printed in the year 1647; and reprinted in the year 1681.

After the said Mr. H. P. hath made a recital of the Heads of my "Vindication," he deduced his Answer unto these eight Particulars, which follow verbatim.

1. "It cannot be denied, but the Parliament sits by the king's writ, nay, if statute law be greater than the king's writ, it cannot be denied but the parliament sits, or ought to sit by something greater than the king's writ: and if it be confessed that the parliament sits by the king's writ, but does not act by the king's writ, then it must follow, that the parliament is a void vain court, and sits to no purpose; nay, it must also follow, that the parliament is of less authority, and of less use than any other inferior court: forasmuch as it is not in the king's power to controul other courts, or to prevent them from sitting or acting.

2. "This is a gross *non sequitur*, the King's power is in himself; *ergo*, it is not derived to, nor does reside virtually in the parliament. For the light of the sun remains imbedded, and unexhausted in the globe of the Sun, at the same time as it is diffused and displayed through all the body of the air; and who sees not that the king, without emptying himself, gives commissions daily of Oyre and Terminer to others, which yet himself can neither frustrate nor elude? but for my part I conceive it is a great error to infer that the parliament hath only the king's power, because it hath the king's power in it: for it seems to me, that the parliament does both sit and act by concurrent power, devolved both from the king and kingdom; and in this some things are more obvious

and apparent than in others. For by what power does the parliament grant Subsidies to the king? If only by the power which the king gives, then the king may take Subsidies without any grant from the parliament: and if it be so by a power, which the people give to the parliament; then it will follow the parliament hath a power given both by king and kingdom.

3. "The sending Propositions to the king, and desiring his concurrence, is scarce worth an Answer; for subjects may humbly petition for that which is their strict right and property. Nay it may sometimes beseech a superior to prefer suit to an inferior for matters in themselves due. God himself hath not utterly disdained to beseech his own miserable, impious, unworthy creatures: besides, 'tis not our Tenor, that the king hath no power, because he hath not all power, nor that the king cannot at all promote our happiness, because he hath no just claim to procure our ruin.

4. "We affirm not, that the king's power is separated from his person, so as the two Spencers affirmed, neither do we frame conclusions out of that separation, as the two Spencers did, either that the king may be removed for misdemeanors, or performed *per asperit*; or that the subject is bound to govern in aid of him; we only say, that his power is distinguishable from his person, and when he himself makes a distinction betwixt them, commanding one thing by his legal writs, courts, and offices, and commanding another thing extrajudicially by word of mouth, letters, or ministers, we are to obey his power rather than his person.

5. "We take not from the king all power of pardoning Delinquents; we only say it is not proper to him *quarto modo*: For if the king pardon him which hath murdered my son, his pardon shall not cut me off from my appeal; and it is more unreasonable, that the king's pardon should make a whole state which hath suffered remediless than any private man. So if the king should deny indemnity to those which in the fury of war have done things unjustifiable by the laws of peace, and thereby keep the wounds of the state from being bound up, it is equitable that an act of indemnity should be made forcible another way. And if his will not hold, yet this is no good consequence, the king is absolute in point of pardons, therefore he is absolute in all things else: and the parliament hath no power to discharge Delinquencies, therefore it hath no power in other matters.

6. "The parliament hath declared the king to be in no condition to govern: But this must not be interpreted rigidly, and without distinction; for if the king with his sword drawn in his hand, and pursuing the parliament and their adherents as Rebels, be not fit for all acts of government, yet it is not hereby insinuated that he is divested of the habit or right of governing: If he be unqualified now, he is not unqualified for the future; if he may not do things destructive to the parliament, he is not

barred from returning to the parliament, or doing justice to the parliament. This is a frivolous cavil, and subterfuge.

7. "We swear, that the king is our supreme governor over all persons, and in all causes; but we do not swear he is above all law, nor above the safety of his people, which is the end of the law, and indeed paramount to the law itself. If he be above law, or liable to no restraint of our law, then we are no freer than the French or the Turks; and if he be above the prime end of law, common safety, then we are not free as the French or Turks; for if the total subversion of the French or Turk were attempted, they might by God's Law, imprinted in the book of nature, justify a self-defence; but we must remedilessly perish, when the king pleases to command our throats. Besides, how achieved the king of England such a supremacy above all law, and the community itself, for whose behalf law was made? If God's donation be pleaded, which is not special to him, or different from what other kings may pretend to, then to what purpose serve our laws, nay, to what purpose serve the laws of other countries? For by this general donation, all nations are condemned to all servitude as well as we; If the law of this land be appealed to, what books hath Mr. Jenkins read, where hath he found out that *lex regia*, whereby the people of England have given away from themselves all right in themselves? Some of our Books tell us, that we are more free than the French; that the king cannot oppress us in our persons or estates, by imprisonment, denying justice, or laying taxes without our consents: Other Books tell us, that the safety of the people is the supreme law, and that the king hath both God and the law for his superior. But all this is nothing to learned Mr. Jenkins.

8. "We admit, that no acts of parliament are complete, or formally binding, without the king's assent: Yet, this is still to be denied, that, therefore, without this assent particularly exprest, the two houses can do nothing, nor have any virtual power at all, no, not to examine Mr. Jenkins, nor to do any other thing of like nature, though in order to public justice and safety. I have done, and wish Mr. Jenkins would call in and lick up again his black, infamous, execrable reproaches, so filthily vomited out against the parliament."

To the First.

I was examined by a Committee appointed by the house of commons: I say, and said, That the house of commons have no power to examine me; for that it is no court: every court hath power to examine upon oath; this power the house of commons never claimed: The court of Pie-powders, Court Baron, Hundred Court, County Court, and every other court of record, or not of record, hath power to examine upon oath, and an examination without oath is a communication only; examination in law is upon oath. [5 H. 4. c. 3. 3 H. 6, 46. 19 H. 8, 43. 35 H. 6. 5.]

There is no court without a power of trial;

the house of commons hath no power to try any office, nor ever practised it by bill, indictment, information, plaint, or original writ, to reduce it to trial, nor to try it by verdict, demurrer, or examination of witnesses upon oath, without which there can be no condemnation or judgment; and that which can attain to no reasonable end, the laws reject as a thing inutile and useless; *Sapiens incipit à fine.* [Sir Anthony Mayne's case. Coke. part. Reports, Lit. 2. lib. sect. 104. 6. H. 4. 1.]

The writ whereby they are called gives them power, 'Ad faciendum et consentiendum;' to what? to such things 'Quæ ibidem de communi consilio ordinaria contigerint,' (viz) in the parliament: [4 par. Inst. fol. 4 and 9.] This makes nothing at all for a court for the house of commons; that *consilium* which that writ intends, is cleared partly by the writ for chusing knights, &c. For the king by that writ is said to resolve to consult and treat with the prelates and peers of the kingdom, for and touching the great concerns of the common wealth (for the king never sits in the house of commons;) and this also is made evident by the Writs to the prelates, peers, judges, and to his council at law; the words in their writ are; 'To appear and attend the parliament,' *consilium impensuri*, the one doth *consulere*, the other *facere et consentire*.

The House of Lords, where the king sits in person, assisted by his lords, judges, serjeants, attorney, solicitor, masters of the chancery, is a Court of Record to many purposes; set down in the Books of Law, and the Statutes of the Land, and that court is only in the House of Lords, where the king sits. 7 H. 1. 28. 1 H. 5. 20. 13 E. 3. ca. 5. 4. pars. Inst. pag. 21.

A Court must either be by the king's patent, statute law, or by the common law, which is common and constant usage; the House of Commons hath no patent to be a court, nor statute law to be a court, nor common usage; they have no Journal Book, but since Ed. 6.'s time: was there ever fine by the House of Commons estreated into the exchequer? for murder or felony they can imprison no man, much less for treason; that house which cannot do the less, cannot do the greater. [Plowd. Com. 319.]

It is ordained, that no man shall be imprisoned or put out of his franchise by the king or his council, but upon Indictment or presentment, of his good and lawful neighbours where the deed is done, or by original writ at the common law, and so is *lex terra*, the law of the land, mentioned in Magna Charta, cap. 29, expounded, and the said Magna Charta, and Charta de Foresta, are declared by the statute of 25 E. 1. c. 1, to be the common law of the land. All judges and commissioners are to proceed 'Secundum legem et consuetudinem regni Angliæ,' as appears by all proceedings in all courts, and by all commissions: and therefore the house of commons by themselves, proceeding not by indictment, presentment, or original writ, have no power to imprison men or put them out of their franchise. [25 E. 3. c. 4. 3 Car. Petition of Right.]

This no way trenches upon the Parliament; for it is in law no parliament without king and both houses; I have only in my Paper delivered to M. Corbet applied myself to the Committee, that had no power to examine me, but I never thought, said, or wrote, that the Parliament had no power to examine me: the law and custom of this land is, that a parliament hath power over my life, liberty, land, and goods, and over every other subject, but the house of commons of itself hath no such power. [4 pars Instit. p. 1, 3 pars Inst. p. 23. 12 H. 7. 20. Prince's Case, 8 par. Coke. par. Inst. p. 159. 14 H. 8. 3. Dyer. 38 H. 8. 60.]

For the lord Coke's relation, that the house of commons have imposed fines, and imprisoned men in queen Elizabeth's time, and since; [1 pars Inst. 19. b.] Few facts of late time never questioned, make no power, nor court; *à facto ad jus* is no good argument; for the words of the statute of 6 H. 8. c. 16, that a licence to depart from the house of commons for any member thereof, is to be entered of record in the book of the Clerk of the Parliament, appointed or to be appointed for that house, doth not conclude that the house of commons is a court of record. [4 pars Inst. c. parl. Hobbart's Reports, fol. 152.]

For first, that law of 6 H. 8. c. 26, handles no such question, as that; whether the house of commons be a court; it is a maxim in all laws, 'Lex aliud tractans nil probet,' the word (Record) there mentioned, is only a memorial of what was done and entered in a Book. A plaint removed out of the county court to the court of the common pleas, hath these words in the writ of remove, 'Recordari facias loquelam,' &c. and yet the county court is no court of record; and so for ancient demesne in a writ of false judgment, the words are 'Recordari facias loquelam,' &c. and yet the court of ancient demesne is no court of record; and so of a court baron, the law and custom of England must be preserved, or England will be destroyed, and have neither law nor custom. [Hobbart's Reports, fol. 152. Fitz. Na. Br. 70. Fitz. Nat. Br. 13. 12 H. 433. 34 H. 6. 49.]

Let any man shew me, that the court of lords, or the house of commons in any age hath made any man a delinquent (*Rege dissentiente*) the king contradicting it under his great seal. Michel, and others of late, were condemned by the prosecution of the house of commons in king James's time; did king James ever contradict it? and so of ancient times, where the house of peers condemned the lord Latimer in 50 E. 3, the king's pardon freed him: which shews clearly, that the king's express or implied assent must of necessity be had to make a delinquent; the execution of the sentence is in the king's name. [4 part Instit. tit. Parliam. p. 23.]

The gentleman saith, "That the parliament sits, or ought to sit by something greater than the king's writ," &c. No parliament did ever sit without the king's writ, nor could ever parliaments begin without the king's presence in

person, or by a guardian of England by patent under the king's great seal, the king being in *remotis*, or by commission under the great seal to certain lords representing the king's person, [4 pars. Inst. p. 4, and 6.] and it hath been thus in all ages unto this session of parliament, wherein his majesty hath been pressed, and hath passed two acts of parliament, one for a Triennial Parliament, and another for a perpetual, if the houses please to satisfy their desires; how these two acts agree one with another, and with the statute in Ed. 3.'s time, where parliaments are ordained to be holden every year, and what mischiefs to the people of this land such length of parliaments will produce by protections and privileges to free them and their menial servants from all debts during their lives, if they please to continue so long, and how destructive to men's actions against them, by reason of the statute of limitations, which confines their actions to certain years, and many other inconveniencies of greater importance, is easy to understand. [4 E. 3, c. 14. 36 E. 3, c. 10, 21 Jac. the Act of limitation of Actions, c. 22.]

How can any man affirm that the two houses of parliament do act now by the king's writ, which relates to Council and Treaty with the king, concerning the king, the defence of his kingdom and of the church of England, these are three points which it tends to, as appears by the writ. They keep their king prisoner at Holmby, and will not suffer him to consult and treat with them. [4 pars. Inst. p. 14. Vow and Covenant, p. 11.] They have made a Vow and a Covenant to assist the forces raised and continued by both houses against the forces raised by the king without their consent, and to the same effect have devised the oath which they call the Negative Oath: Is this to defend the king's kingdom, or their kingdom?

When by their solemn League and Covenant they extirpate bishops, deans, and chapters root and branch, is this to defend the church of England? (that church must necessarily be meant, that was the church of England when the said writ bore test) they were not summoned to defend a church that was not in being, to destroy and defend the church are very contrary things; the church is not defended, when they take away and sell the lands of the church. [1 pars. Coke, dean and chapter of Norwich.]

The gentleman saith, "The king cannot controul other courts of justice, or prevent them from sitting, or enacting, and therefore not the two houses, &c." It is true, the king cannot controul or prevent his other courts, for that they are his ordinary courts of common justice, to administer common right unto all men according to the fixed laws. The houses make no court without the king, they are no body corporate without the king, nor parliament without the king, they all make one corporate body, one court called the parliament, whereof the king is the head, and the court is in the lords house, where the king is present: and as man is no man without a head, so the

houses severed from the king, as now they are, have no power at all, and they themselves by levying war against the king, and imprisoning of him, have made the statute for not dissolving, adjourning, or proroguing this parliament of no effect, by the said acts of their own: they sit to no purpose without his assent to their bills, they will not suffer him to consult with them, and treat and reason with them, whereby he may discern what bills are fit to pass, and what not, which in all ages the kings of this land have enjoyed as their undoubted rights, and therefore they sit to no purpose by their own disobedience and fault. [14 H. 8. 3. 36 Hen. 8. Dyer. 60. 4 pars Inst. p. 1].

For the ordinary courts at Westminster, the judges in all those courts are judges by the king's patent or writ, otherwise they are no judges: the houses can make no judges, they are no judges at all who are made by them; the whole and sole power of making judges belongs to the king: the king cannot controul or prevent his own judges from sitting and acting, but the houses he may, for they are not the king's judges but the judges of the two houses. In his other courts, the king commits his power to his judges by his patent, and they are sworn to do common right to all men, and the king is sworn not to let them from so doing; the king cannot judge in those courts, nor controul; but the king is both judge and controul in the court of parliament, *quoad* acts, for his assent or dissent doth give life or death to all bills. Many lawyers have much to answer to God, this kingdom, and to posterity, for pulling the people of this land with fancies, as the gentleman who wrote the Answer to my Paper, and others, have published in these troubles, which have been none of the least causes of the raising and continuing of them: And so I have done with the first part of this Answer. [17 H. 8, c. 24. 23 H. 8. 11 Dyer. 2 R. 3, 11].

To the Second.

For the *non sequitur*, in the second section of the gentleman's Answer, the antecedent and the consequent are his own.

—Ibellus:

Quem recitas meus est (ô Fidentine!)

Sed male dum recitas incipit esse tuus.

My words are, that the king is not virtually in the two houses at Westminster, to enable them to grant pardons, for that whole and sole power by the law belongs to the king: My Paper hath no such thing, as that the king's power cannot be derived to others, or the virtue of his power: For his power, and the virtue of his power, is in all patents to his judges, in charters to corporations, in commissions of all sorts, and in the parliament assembled by force of his writ of summons, so long it is they obey him: but when they renounce that power, and claim it not from the king, and declare to the kingdom, that he is not in condition to govern, and imprison him, and usurp to themselves all royal authority, as the two houses now do, no reasonable man can affirm, that they act by the

power of their prisoner, who hath no power to give them, that by force of arms take all power to themselves. [27 H. 8, c. 24].

The gentleman saith, "The king grants commissions daily of Oyer and Terminer, which he cannot frustrate nor elude." The king may revoke and discharge the commission by his writ, as he may remove all judges, and place other men in their room; and any king's death determines all the judges patents at Westminster-Hall, commission of Oyer and Terminer, &c. And so he might dissolve both houses in all times by his writ under the great seal, until that in this parliament, by his own concession, the king of his goodness hath secluded himself, which goodness hath been full ill requited. [4 E. 4, 34. 5 E. 4, 4. 1 Eliz. Dyer. 165. 1 Mar. Brook's case 447].

The gentleman affirms, "That the power the parliament hath is concurrent from the king and kingdom;" which he conceives is proved by the grant of subsidies to the king by the parliament. The mistaking of this word 'parliament,' hath been mischievous in these times to this land, and it is affectedly mistaken, which makes the sin the greater, for the two houses are not the parliament, as before is declared, and at this time so to inculcate it, when all men know that of the 120 peers of the kingdom, who were temporal peers before the troubles, there are now not above 30 in the lords house, and in the house of commons, about 200 of the principal gentlemen of the kingdom left the house and adhered to his majesty, whose imprisonment by them shews no such candour as is to be desired.

It is true, that no Tallage can be laid upon the people of this land but by their consent in parliament, as appeareth by the laws mentioned in the margin; but you shall find in Mr. Selden's learned book, called "Mare Clausum," a number of precedents in Henry 3rd's time for Ship-money, justly condemned this parliament, to the which his majesty assented; and in truth that Ship-money was condemned before by the said two statutes of 25 E. 1, and 34 E. 1, "de Tallagio non concedendo," Danegelt, Englishety, and many grievous burthens were laid upon the people, and born until that memorable prince's time. But I am of opinion, that the common law of the land did always restrain kings from all subsidies and tallages, but by consent in parliament; which doth appear by Magna Charta, the last chapter, where the prelates, lords, and commonalty, gave the king the fifteenth part of their moveables. In truth it is no manner of consequence, because the king cannot take what he pleaseth of the subject's goods, that therefore they have a concurrent power in parliament; there have been many parliaments and no subsidies granted: parliaments may be without subsidies, but subsidies cannot be without parliaments: of ancient times parliaments rarely granted any, unless in the time of foreign wars; and in my time, queen Elizabeth refused a subsidy granted in parliament, and in the parliament 1 Jac.

none were granted. The gentleman should make a conscience of blinding the people with such untrue colours, to the ruin of the king and people.

#### To the Third.

The gentleman affirms, "That the sending Propositions to the king, and desiring his concurrence, is scarce worth an answer, for subjects may humbly petition for that which is their strict right and property." The Propositions sent to Newcastle, are in print; wherein the two houses are so far from humbly petitioning, that they stile not themselves his majesty's subjects, as appears by the Propositions.—That they have a strict right or property to any one of these Propositions is a strange assertion, every one of them being against the laws now in force. Have the two houses a strict right and property, to lay upon the people what taxes they shall judge meet? to pardon all treasons, &c. that is one of their Propositions. Have they a strict right and property to pardon themselves; And so for all the rest of their Propositions.—These Propositions have been voted by both houses, the king's assent, they being drawn into bills, makes them acts of parliament: Hath the king no right to assent or dissent? Was the sending but a compliment? All our law-books and statutes speak otherwise. This gentleman, and others, must give an account one time or other for such delusions put upon the people. [12 H. 7, 20, 1 Jac. c. 1, 1 Car. c. 7.]

#### To the Fourth.

The gentleman saith, "They affirm not, that the king's power is separated from his person, so as the two Spencers affirmed, &c." His majesty's person is now at Holmby under their guards; have they not severed his power from him, when by no power they have left him; he cannot have two of his chaplains, who have not taken their covenant, to attend him for the exercise of his conscience?

For the three conclusions of the Spencers, do not the two houses act every of them? They say, his majesty hath broken his trust, touching the government of his people; they have raised armies to take him, they have taken him, and imprisoned him; they govern themselves; they make laws, impose taxes, make judges, sheriffs, and take upon them 'omnia insignia summæ potestatis.' Is not this to remove the king for misdemeanors, to reform *per asperitè*, to govern in aid of him; the three conclusions of the Spencers? Do they think the good people of England are become stupid, and will not at length see these things? [15 Ed. 2, Exilium Hugonis, Calvin's Case 1 E. c. 2, 7 pars Reports. 11.]

The gentleman saith "They do not separate his power from his person, but distinguish it," &c. His power is in his legal writs, courts, and officers: When they counterfeit the great seal, and seal writs with the same, make judges themselves, courts and officers by their own ordinances against his consent, declared under

his true great seal of England (not by word of mouth, letters, or ministers only) their seal is obeyed, their own writs, their own judges, their own courts, their own officers, and not the king's: The time will come when such strange actions and discourses will be lamented. [Plowd. 4, Eli. 2, c. 3.]

#### To the Fifth.

The gentleman goes on, "We take not from the king all power of pardoning Delinquents, we only say it is not proper to him *quarto modo*, &c." What do you mean by *quarto modo*? I am sure, "Omnis rex Angliæ, solus rex et semper rex," can do it, and none else. Read the books of the law to this purpose, collected by that reverend and learned judge Stamford, from all antiquity to his time, who died in the last year of king Philip and queen Mary's reign, you shall find this a truth undeniable; and this power was never questioned in any age in any book by any until this time, that every thing is put to the question: You gentlemen, who profess the law, and maintain the party against the king, return at length, and bring not so much scandal upon the law, (which preserves all) by publishing such incredible things. [Stamford Pleas 95, 27. H. 3, c. 24, Dier. 163.]

We hold only what the law holds: The king's prerogative and the subject's liberty are determined, and bounded, and admeasured by the written law what they are; we do not hold the king to have any more power, neither doth his majesty claim any other but what the law gives him; the two houses by the law of this land, have no colour of power, either to make delinquents, or pardon delinquents, the king contradicting: (and the army under sir Thomas Fairfax, howbeit but soldiers, do now understand that to be law, and do now evidently see, and assuredly know, that it is not an ordinance of the two houses, but an act of parliament, made by the king, lords, and commons, that will secure them, and let this army remember their executed fellow-soldiers,) and the law was always so taken by all men until these troubles; that have begot monsters of opinions. [Bract. lib. 3, cap. 14, fol. 132, 1 pars Instit. p. 341. Plow. 3, Litz. 236, 237.]

#### To the Sixth.

This gentleman says, "The Parliament hath declared the king to be in no condition to govern, &c." There is no end of your distinctions, I and you profess the law; shew me law for your distinctions, or letter, syllable, or line, in any age in the books of the law, that the king may in one time be in no condition to govern, and yet have the habit of governing, and another time he may (viz.) when the two houses will suffer him: The law saith thus, "Ubi lex non distinguit, non est distinguendum."

He says, "the king is not barred from returning to his parliament," (as he calls the two houses) he knows the contrary, the whole city knows the contrary, "Nos juris consulti sumus

sacerdotes," (as Justinian the emperor hath it, in the first Book of his Institutions) and therefore knowledge and truth should come from our lips: Worthy and ingenious men will remember, and reflect upon that passage of that good and wise man Seneca, "Non qua itur, sed qua eundum;" follow not the ways of the lawyers of the house of commons; God forgive them, I am sure the king will, if they be wise and seek it in time.

#### To the Seventh.

The gentleman says, "We swear that the king is our supreme governor over all persons and in all causes, &c." Why hath he left but the word: ("only?") for the oath the members now take, is that king Charles is now the only and supreme governor in all causes, over all persons, and yet they keep their only supreme governor now in prison, and act now in parliament by virtue of their prisoner's writ, and by a concurrent power in this parliament, and by their own strict right and property, (as the gentleman affirms in his answer). These things agree well with their oath, that the king is the only supreme governor in all causes over all persons: This oath is taken now in the parliament time by all members of the house of commons, and is required by the law to be taken in all parliaments, otherwise they have no power, nor colour to meddle with the public affairs. [1 Litz. ch. 1. Cawdries Case 5 pars. fol. 1.]

This Oath being taken in parliament, that "the king is the only and supreme governor in all causes," then it follows in parliament causes; "over all persons," then over the two houses; let them keep this oath, and we shall be sure of peace in the land: And good lawyers ought to desire peace both for the public good, and their private, and not dishonour that noble profession, as many do in this miserable time.

The gentleman says, "we do not swear that the king is above all law, nor above the safety of his people;" neither do we so swear, but his majesty and we will swear to the contrary, and have sworn, and have made good, and will by God's grace make good our oath to the world, that the king is not above the law, nor above the safety of his people. The law, and the safety of his people, are his safety, his honour, and his strength.

#### To the Eighth.

The gentleman concludes, "That acts of parliament are not formally binding, nor complete without the king's assent, yet the houses have a virtual power without the king's particular assent, to do things in order to public justice and safety. (viz.) In setting up the excise, in raising and maintaining of Armies, in taxing the people at pleasure with fifth and twentieth parts, fifty subsidies, sequestrations, loans, compositions, imprisoning the king, abolishing the common-prayer-book, selling the church-lands, &c. All these are in order to the public justice and safety."

Mr. H. P. you are of my profession; I be-

teach you, for the good of your country, for the honour of our science, perswade yourself, and others as much as in you lies, to believe and follow the monition and counsel of that memorable, reverend, and profoundly learned in the laws and customs of the land, the lord Coke [3 part Inst. p. 36.] who writes as becomes a great and learned judge of the law (a person much magnified by the two houses) in these words: "Peruse over all books, records, and histories, and you shall find a principle in law, a rule in reason, and a trial in experience, that treason doth ever produce fatal and final destruction to the offender, and never attains to the desired end, two incidents inseparable thereunto, and therefore let all men abandon it, as the poisonous bait of the devil, and follow the precept in holy scripture, "serve God, honour the king, and have no company with the seditious."

#### Conclusion.

I say again, that without an Act of Oblivion, a gracious General Pardon from his majesty, the Arrears of the Soldiers paid, a favourable regard had to tender consciences, there will be neither truth nor peace in this land, nor any man secure of any thing he hath. By me,  
DAVID JENKINS, Prisoner in the Tower.

Judge Jenkins's PLEA, delivered in to the earl of Manchester, and the Speaker of the house of commons, sitting in the chancery at Westminster, which was read by their command in open court, the 14th of Feb. 1648; and there avowed by David Jenkins, prisoner in Newgate: London; Printed in the year 1648; and Reprinted in the year 1681.

I have been required to appear in the Chancery the twelfth of this instant February, before Commissioners appointed by the two Houses for the keeping of their great seal, and managing the affairs of the Chancery. I cannot, nor ought, nor will submit to this power; I am a Judge sworn to the laws. The law is first, that this court is *coram rege in Cancellaria*: Secondly, the Chancellor or keeper of the great seal is made by delivery of the great seal to him by the king, and by taking of an Oath. [4 pars Inst. fol. 79. 8 H. 4. fol. 5. 9 E. 4. f. 15.]

The Oath followeth in these words.

'1. Well and truly to serve our sovereign lord the king, and his people, in that office.  
'2. To do right to all manner of people, poor and rich, after the laws and usages of this realm.  
'3. Truly to counsel the king, and his counsel to conceal and keep.  
'4. Not to suffer the hurt, or disheriting of the king, or that the rights of the crown be decreased by any means as far as he may let it.  
'5. If he may not let it, he shall make it clearly and expressly to be known to the king, with his advice and counsel.  
'6. And that he shall do and purchase the king's profit in all that he reasonably may, as God him help, and the

'contents of God's book.' [41. pars Ia. fol. 88. 10. R. 2. rot. Parl. num. 8.]

The said Commissioners among others have imprisoned their king, have declared to the kingdom that they will make no Addresses or Applications to him, nor receive any from him. [Declar. 17 Jan. 1648.] Have counterfeited a new great seal, and after destroyed the true old great seal which belonged by the law to the king's custody. [Articul. sup. Chartas. c. 5.]

These Commissioners have had no seal delivered to them by his majesty, have taken no such Oath, or full ill keep it, and for these evident reasons grounded upon the fundamental laws of this land, these Commissioners have neither court, seal or commission, and therefore I ought not against the laws, against my knowledge, and against my conscience, to submit to their power.

To affirm that they maintain the king's Power and authority in relation to his laws (as they often do) and restrain only his person, is strange. They must be remembered that the House of Commons this Parliament gave in charge to Mr. Solicitor upon the prosecution of the Bill of Attainder against the earl of Strafford, to declare the law to be "that machination of war against the laws or kingdom, is against the king, they cannot be severed."

Mr. Pym had in charge likewise upon the same prosecution to declare "that the king and his People are obliged one to another in the nearest relation, he is a father, and the child in law is called *pars patris*, he is the husband of the common-wealth, they have the same interests, they are inseparable in their condition, be it good or evil; he is the Head, they are the body, there is such an incorporation as cannot be dissolved without the destruction of both." This agrees with our laws, and the law of this land: In that argument of Mr. Solicitor, and discourse of Mr. Pym, directed by the House of Commons, are contained the true Rights, Liberties, and Laws of the people, deduced from our ancestors in all ages, and wherein there is no line or word but is agreeable to the laws, and is a necessary and useful Book to be perused, and followed by all; which Book was published by order of the house of commons. If the doctrine of that book had been followed, we had not been so miserable as we are; neither had these great evils ensued, for the which the land mourns. [20 H. 7. fol. 7. 8 H. 7. fol. 12. 1 E. 5. fol. 3. 4. E. 4. fol. 25. 5 E. 4. fol. 29.]

In this month of February, six years now past, the only difference between his majesty and the prevailing party in both houses, was touching the Power of the Militia, which in plain English is, Power over Sea and Land. This was the sole quarrel. The king and his progenitors have had it in all times, the laws have fixed it upon them; they have used it for the weal of the people: none of the subjects ever had it or claimed it; the laws deny it them; for the time they have had it, our pre-

sures have been miserable. [Collect. of Ordinances, 1 pars. fol. 66, 67. 81.]

His majesty hath a numerous issue, and so hath his father: many great persons of England and Scotland are of the blood royal, and all the kings of Christendom are of the same blood, so long as the laws last, or any of the said persons, or their descendants be living, this people shall have neither peace nor profit; but all the confusions that are imaginable will attend them.—And therefore, at length, be good to yourselves, restore our king, receive from him an act of oblivion, a general pardon, assurance for the arrears of the soldiery, and meet satisfaction to tender consciences.

By DAVID JENKINS, prisoner in Newgate. Feb. 12, 1648.

The Answer of Judge Jenkins, to the imputation put upon his Plea in Chancery, which was read in open Court the 14th of Feb. 1648, and avowed, by David Jenkins, prisoner in Newgate. Printed in the year 1648, and re-printed in the year 1681.

I have no disposition, nor ever had, to be known by any public Writing: These miserable times, which fill many men's mouths, and most men's ears, with notorious untruths, thereby to blast and destroy the King's sacred majesty, his laws and government, and to bring in a confusion; enforceth me at this time (who formerly have written nothing but for the public) to let the world know how unjustly the Pamphleteer of this week, licensed by our Reformers, hath traduced me, touching a suit commenced in their Court of Chancery against me, by one Mr. Ernely a Wiltshire gentleman, touching the estate of one Mr. Thomas of Glamorganshire. The truth whereof is as followeth:

Mr. Thomas, whose father and my grandfather were two brothers, about 17 years past made his will, and declared by the same his son (being then of very tender years) a ward to his majesty, and made him executor, and myself during his minority, (referring to his wardship) to administer his estate personal and testamentary, and to be accountable to his son when he came to age: and 17 years since the father died.—This estate consists in a stock of sheep, so disposed by me as the number are yet continued, and for the number and condition, they were at their delivery back, to be made as good by those persons, who had the charge of them, as they were when they were received.—The rest of the estate (for any considerable part) was in mortgages of land, forfeited in the life of my young cousin Thomas, for many of them, and many absolutely purchased by me in his name in his life-time, for the which I am not yet paid.—The land descended, and ought, upon sir Edward Thomas, my cousin's heir at common law; so that Mr. Ernely, the Plaintiff in Chancery, hath no colour for the land: for my young cousin died without issue about 17 years old, and could not dispose of the inheritance of any land by any pretended will: The stock of sheep remains, if the Plaintiff and the

Reformers have not plundered them: For the money it came all to the Court, it was to satisfy the king for the marriage.

The colour the Plaintiff hath, is this: After the death of my old kinsman Mr. Thomas, by undue means the young gentleman was married to Mr. Ernely's daughter, in a way of ravishment, being both children, without one penny paid, or consent of friends or kindred: For the which, a suit of ravishment depended against Mr. Ernely and others in the Court of Wards.—The young gentleman died about 17 years of age, since these confusions, without issue; and some hours before my young cousin's death, (who died of a pestilent fever) Mr. Ernely pretends a will made by him, and that he made his wife (Mr. Ernely's daughter) his executrix: his said wife dies soon after, and is pretended to make nuncupative will, and to make her father (Mr. Ernely) her executor, and so pretends as executor of an executor of an executor: which pretended wills he saith he hath proved in the courts of his friends the Reformers.

Whether such wills were made or no, must receive an equal examination, and of what validity they are, being pretended to be made by children in *extremis*, if made at all? And whether an executor of an executor of an executor, can maintain an account by the law of the land? and whether (I being executor during the minority, viz. the wardship) my young cousin could make such a will as is pretended, he being no executor till his full age.

The age touching wills, the law of this land determines to be 21 years, (37 H. 6, 5. 21 E. 4, 24.) and before that age at common law an use could not be devised. For wills touching goods and chattels, our law for many ages hath left the same to the decision of the civil and canon laws, in the bishops' courts. That law, (as Justinian hath it in the second book of his Institutions, the 12th chap.) is, "*Impuberi non licet testari*:" This *Pubertas* begins at 14. It is *plena pubertas* at 18 years of age: the question is, whether this *jus testandi* is in *pubertate plena*, or *pubertate incepta*: Pigot's case, 5th part of Coke's Reports, the doctors affirmed, that 17 years of age was a full age as to an infant executor to dispose of goods, this opinion hath been by others since denied. Sir Edward Coke 11 part, Instit. sect. 123, saith, He must be 18, which is the time of *plena pubertas*, 2 Hen. 4, 12, an infant of 18 years of age may be a disseisor. Sir John Doderidge in his Book called, "*The Office and Duty of Executors*;" which they say is his, and it is a learned and laborious Treatise, fol. 347, delivers, that this opinion of 17 years, for that ability in an infant, hath been reported otherwise: this latter opinion comes nearer the common law, and the statute law of the land: which common law, and statute law, gives infants no power by deed or will to make any disposition of any thing they have, before they be 21 years of age.

It seems also more reasonable, because infants at 18 years have, by the intendment of law, as they grow in years, more use of

reason to discern what is fit for them to do and act. And for a mere stranger to sue in a Court of Conscience, who pretends by such wills of infants (the infant husband being ravished) against the will of the kindred of the deceased, who died six years sithence without issue (being 17 years of age) and that any part of his estate should go that way by a course of equity, unless the law be for Mr. Ernely, who paid not a penny with his daughter, and who would have the husband of his daughter bring him a portion, by his pretended title of an executor of an executor of an executor, viz. of an infant the executor of another infant, the executor of a third person, seems very strange.

The said licensed Historiographer of theirs, hath published, the 16th of this present month of February 1647, "That I, out of a desire to keep the estate, have in a suit in the Court of Wards, in my cousin's life time, pleaded to the Jurisdiction of that Court." It is true, I did so: for I conceived that the estate would be unsafe in Mr. Ernely's hands, and I was willing to preserve it till my young cousin came to be of age, to dispose of it himself, according as I was trusted.

The law being, that the Court of Wards hath no jurisdiction over the personal estate, for then the marriage was paid for to the king, and all due to the king ascertained. (32 H. 8, c. 46, 4 pars Instit. fol. 201, 202). It is true, that that was insisted upon, as was just, for to preserve the estate from Mr. Ernely, who would have made what account he pleased to my cousin at his full age: and this is the truth of that business.—That I declined not the jurisdiction of the Chancery, to keep an estate in my hand, appears, by my declining long since the power of the House of Commons to examine me; and the Reformers have all my estate: what would Mr. Ernely have, when they (the Reformers) have all already, or can have from me, if he had any colour?

I desire the good people of this City to observe what notorious untruths their licensed Historiographers publish to delude the people. In this particular case they publish,

1. "That the Suit against me, is in the behalf of an Orphan." Mr. Ernely (who is Plaintiff in their court) is a Wiltshire gentleman, at the least of 50 years of age, there is their orphan.

2. "That I made a Speech to the people at the Hall door, that the questioning of me for what I had done for the king, was illegal; and that the Judges had no power to try me, the king being absent;" another notorious untruth! For I protest to God all that I said was only this, "God preserve the king and the laws."

3. It is said that coming to the bar, I stirred not my hat: All the lawyers then at the bar were uncovered; whereof I held it a civility, to be also uncovered: and so I was, as they all know.

4. "That the earl of Manchester should say, "I received a great estate in money, of the Orphan's Estate:" as there is no truth in

it, so it is most untrue that the said lord so said (as all men present can testify,) the truth is, they care not what they do, what they say, what they swear, nor what they write: witness the Declaration of a prevailing party of the House of Commons, of the 11th of this instant February; who contrary to the Oath of Allegiance, the Oath of Supremacy, the Protestation, their Solemn League and Covenant, their Declarations to make his majesty a glorious king, fearful to his enemies, and beloved of his subjects; and yet now, after 22 years, they would insinuate to the people, that this King, whom they have so much magnified, hath poisoned his own father.

5. It is a public notorious untruth, "That the Parliament hath published a Declaration against the king, of the 1st of this instant Feb." whereas it is well known to be the Declaration of the prevailing party of the House of Commons only, without the Lords: and so they would make that prevailing party only to be the Parliament.\*

Let the People of England believe their five senses how it was with them seven years ago, and before, during his majesty's reign: how this kingdom abounded then with peace, plenty, and glory, to the admiration and envy of other nations: and now let them consider and judge by their senses, since those men (whom nothing would satisfy, but all power both by sea and land, which in truth is the regality and kingship, which they call the Militia, have usurped the said power regal, whether they have not, by impostures and delusions, diffused among the people by themselves and their agents, brought a flourishing kingdom to the most deplorable condition it now is in.

To the end that this kingdom may not utterly be ruined, God incline their hearts to restore his majesty, and for their own and their posterities sake to receive from his majesty an Act of Oblivion, a General Pardon, assurance for the Arrears of the soldiery, and meet satisfaction for tender consciences.

DAVID JENKINS.

Judge Jenkins's REMONSTRANCE to the Lords and Commons, the 21st of Feb. 1648, at Westminster.

I desire that the Lords and Commons of the two houses, would be pleased to remember, and that all the good people of England do take notice, of an Order of the House of Commons this session, for publishing the lord Coke his Books: which Order they may find printed in the last leaf of the second part of his Institutes, in these words, viz.

'Die Mercurij 12 Majj. 1641.

'Upon debate this day in the Commons House of Parliament, the said house did then

\* "Their Licensed Historiographer hath published this in the Pamphlet called the "Kingdom's Weekly Post," from Wednesday Feb. 7, to Wednesday the 16th of Feb. 1647."

“desire, and held it fit, that the heir of sir Edward Coke should publish in print the ‘Commentary upon Magna Charta, the Pleas of the Crown, and the Jurisdiction of Courts,’ according to the intention of the said sir Edward Coke, and that none but the heir of the said sir Edw. Coke, or he that shall be authorized by him, do presume to publish in print any of the foresaid books, or any copy thereof.

‘H. ELSIGNE, Cler. Dom. Com.’

And I do further desire them that they would read and peruse Mr. Solicitor St. John, and Mr. Pym, their Books published likewise this session, whose Titles are as followeth, viz. “An Argument of Law, concerning the Bill of Attainder of High Treason of Thomas earl of Strafford, at a Conference in a Committee of both houses of parliament, by Mr. St. John, his Majesty’s solicitor general. Published by order of the Commons house.” And the “Speech or Declaration of John Pym, esq. after the Recaptulation or summing up of the Charge of High Treason against Thomas earl of Strafford, 12th April, 1641. Published by the Order of the House of Commons.”

1. Nothing is delivered in law in my Books, but what the House of Commons have avowed to be law in Books of Law, published by their command this session, and agreeable to the books of law, and statutes of this realm, in all former times and ages.

2. The supposed Offence charged on me is against the two Houses, and none ought to be judges and parties, by the law of the land, in their own case.

3. I desire the benefit of Magna Charta, the Petition of Right, and other good laws of this land, which ordain that “Men’s Trials should be by the established laws, and not otherwise.” They are the very words of the Petition of Right.

An Ordinance of both Houses is no law of the land, by their own confession; and by the books of the lord Coke, published by their Order, as aforesaid, this session, in six several places.\*

For Sedition, in my Books there is none, but such as they have “authorised to be published and printed.” To publish the Law is no sedition. These positions following I do set down for the law of the land in my Books, and they themselves have justified, and avowed them as aforesaid; We agree the law to be, and to have been in all times in all the Particulars following, as here ensueth:

1. To imprison the King is High Treason.

2. To remove counsellors from the king by force is High Treason.

3. To alter the established Laws in any part by force is High Treason.

4. To usurp the Royal Power is High Treason.

5. To alter the Religion established is High Treason.

6. To raise Rumours, and give out words to alienate the people’s affections from the king, is High Treason.

7. To soss Soldiers upon the people of the kingdom, without their consent, is High Treason. [Mr. Solicitor, p. 9.]

8. The execution of Paper Orders by Soldiers in a military way, is High Treason. [Mr. Solicitor, p. 9.]

9. To counterfeit the great seal, is High Treason. [Mr. Solicitor, p. 24. 4 part Instit. p. 125. Justice Hutton’s Argument; fol. 39, 40. 4 part Inst.]

10. The Commission of Array is in force, and none other.

11. None can make judges, justices, sheriffs, &c. but the king: the king makes every court.

12. The Great Seal belongs to the king’s custody, or to whom he shall appoint, and none other. [2 part Instit. Articul. super Chartas, c. 5.]

13. Ordinances of one or both houses are no laws to bind the people. [1 par. Coll. of Ordin. et Coke ut supra.]

14. No Privilege of Parliament, holds for Treason, Felony, or Breach of the Peace, not for twenty parliament men, forty, nor three hundred. [4 p. Inst. 25.]

15. To subvert the Fundamental Laws is High Treason. [Mr. Solicitor, p. 8. 70.]

16. To levy War against the person of the King is High Treason. [Mr. Solicitor, p. 12, 27.]

17. To persuade Foreigners to Levy War within this kingdom, is High Treason. [Mr. Solicitor, p. 26.]

18. To impose unlawful Taxes, to impose new Oaths, is High Treason. [Mr. Solicitor, p. 35.]

19. The king can do no wrong. [Mr. Pym, p. 8.]

20. It is a pernicious doctrine to teach Subjects, they may be discharged from the Oath of Allegiance. Then what means the doctrine of both Houses of the Votes 11th of Feb. 1647. [Mr. Pym, p. 17.]

21. “A necessity of a man’s own making, doth not excuse him.” The requiring and forcing of the militia, brought the necessity of arming upon the houses. [Mr. Pym, p. 24.]

22. “None can levy War within this realm without Authority from the king, for to him only it belongeth to levy war, by the common law of the land, to do otherwise is High Treason by the said common law.” [3 par. Inst. p. 9.] The only quarrel was and is the Militia: for the which so much blood hath been spent, and treasure. [Mr. Solicitor, 70, 71.]

23. No parliament without the king, he is *principium, caput et finis*. [4 part, Inst. p. 1, 3, 4. 4 pars Inst. 41, 356.]

24. Presentment or Trial by Jury, is the birth-right of the subject.

There is no doubt but that many in both Houses are free from this Great Sin, and that most of the prevailing party, had at first no in-

\* 1 Part, Col. of Ordinaunces, fol. 728, 2 pars Instit. fol. 47, 48, 157, 153, 4 pars Instit. 23, 234, 238, A H, 7, 18.

tentions to proceed so far; but the madness of the people (who are very unstable, and so they will find them) and the success of their armies (having this great rich city to supply them with all accommodations) have so elevated them, that the evil is come to this height.

For myself, to put me to death in this cause is the greatest honour I can possibly receive in this world. 'Dulce et decorum est mori pro patriâ.' And for a Lawyer and a Judge of the Law, to die 'Dum sanctis patriæ legibus obsequitur;' for obedience to the laws; will be deemed by the good men of this time, a sweet smelling sacrifice; and by this, and future times, that I died full of years, and had an honest and honourable end. And posterity will take knowledge of those men, who put some to death for subverting of the laws, and others for supporting of them, &c.

Yet mercy is above all the works of God, "The king is God's vicar on earth." In Bracton\*, who was a judge in Henry 3rd's time, you shall find the king's oath, "To shew mercy," is part of it: You are all his children; say and do what you will, you are all his subjects, and "He is our king and parent." "Pro magno peccato paupulum supplicii satis est patri:" And therefore let not the prevailing party be obdurate; out of a desperation of safety: That which is past is not revocable: Take to your thoughts your parents, your wives, your children, your friends, your fortunes, your country; wherein foreigners write there is 'Mira æris suavitatis, et rerum omnium abundantia.'

Invite them not hither, the only way to be free of their company will be, To restore his majesty, and receive from him an Act of Oblivion, a General Pardon, assurance for the Arraers of the Soldiery, and meet satisfaction to tender consciences. God preserve the King and the Laws.

DAVID JENKINS.  
Prisoner in Newgate.

"David Jenkins was made one of the Judges for South Wales, and continued in that office till the rebellion broke out, at which time he either imprisoned divers persons in his circuit, or condemned them to die, as being guilty of high treason for bearing arms against the king. At length, being taken prisoner at Hereford, when that city was surprised by the parliament forces, Dec. 18, 1645, he was hurried up to London, and committed prisoner to the Tower. Afterwards, being brought to the bar in Chancery, he denied the authority of that court, because their seal was counterfeited, and so consequently the commissioners thereof were constituted against law: Whereupon, being committed to Newgate prison, he was impeached of treason, and brought to the bar of the commons house; but denying their authority, and refusing to kneel, was for his contempt fined 1,000*l.* and remitted to his prison, and thence translated to Wallingford Castle.

\* Bract. l. 3, c. 9, p. 107. 4 pars Inst. 742, 343. Stanford 99.

"Afterwards passed an act for his Trial in the high court of justice, A. D. 1650, so, that Jenkins thinking of nothing but hanging, was resolved, if it should come to pass, to suffer with the Bible under one arm, and Magna Charta (of which he was a zealous defender) under the other. But Harry Marten (as it is said) urging to his fellows that, *Sanguis Martyrum est Semen Ecclesie*, and that that way of proceeding would do them mischief, they thought good not to take away his life." Wood's Ath. 11, 328.

"When Judge Jenkins was brought before the Rump in 1646, he treated those rebels with a just and becoming contempt. 'In your speech,' says he, 'Mr. Speaker, you said the house was offended with my behaviour, in not making any obeisance to you upon my coming here; and this was the more wondered at, because I pretended to be knowing in the laws of the land (having made it my study for these five and forty years). And because I am so, that was the reason of such my behaviour. For, as long as you had the king's arms engraved on your mace, and acted under his authority, had I come here, I would have bowed my body in obedience to his authority, by which you were first called. But, Mr. Speaker, since you and this house have renounced all your duty and allegiance to your sovereign and natural liege lord the king, and are become a den of thieves, should I bow myself in this house of Rimmon, the Lord would not pardon me in this thing.' Which provoked the house so much, that without any trial they voted him and sir Francis Butler guilty of high treason, and fixed the day of execution; but were again diverted from it by a droll speech of that remarkable buffoon Harry Marten.

"After this, they sent a committee from the Commons' house to Newgate to judge Jenkins, and made this offer to him, 'That if he would own their power to be lawful, they would not only take off the sequestrations from his estates, which were about 500*l.* per annum, but would also settle a pension on him of 1,000*l.* a year.' To which he answered, 'Far be it from me to own rebellion (although it was successful) to be lawful;' so he desired to see their backs.

"Then the chief of them made another proposal to the Judge, and said, 'He should have the sum was mentioned above, if he would but permit and suffer them to put in print, 'That he did own and acknowledge their power to be lawful and just, and would not gainsay it.' To this he answered, 'That he would not connive at their so doing, for all the money they had robbed the kingdom of, and should they be so impudent as to print any such matter, he would sell his doublet and coat to buy pens, ink and paper, (the use of which it seems, was not debarred him) and would set forth the Commons' house in their proper colours.' When they found him so firm, one of the committee used this motive,

'You have a wife and nine children, who all will starve if you refuse this offer; so consider, for their sakes, they make up ten pressing arguments for your compliance.' 'What,' said the Judge, 'did they desire you to press me in this matter?' 'I will not say they did,' replied the committee man, 'but I think they press you to it without speaking at all.' With that the old man's anger was heightened to the utmost, and he in passion said, 'Had my wife and children petitioned you in this matter, I would have looked on her as a whore, and them as bastards.' Upon this the committee departed, and he continued in Newgate till the

Restoration." Grey's Ex. of Neale's 4th vol. Heath, in his "Loyal English Martyrs," (which book appears to have been written very shortly after the Restoration, for it mentions Sheldon as "now bishop of London," which see he occupied only from 1660 to 1663,) speaking of Jenkins, says, "He was continued a close prisoner till they were weary of him, and then was sent to Windsor in the same quality, where he continued of the same mind, till without thanks, he was permitted the liberty of the town. This brave stout person is yet living, but when dead his memory shall endure for evermore."

179. Two Judgments of the Lords assembled in Parliament against JOHN MORRIS, alias POYNTZ, MARY his Wife, ISABEL SMITH, LEONARD DARBY, and JOHN HARRIS, for forging, framing, and publishing a Copy of a pretended Act of Parliament: 23 CHARLES I. A. D. 1647.

Die Martis, 21 September, 1647.

WHEREAS John Brown, esq. Clerk of the Parliaments, did the 25th day of June, 1647, exhibit a Charge before the Lords in Parliament, against John Morris, alias Poyntz, Mary his wife, Isabel Smith, Leonard Darby, and John Harris, for forging, framing, and publishing a Copy of a pretended Act of Parliament, alledged to have been made in the 43d of Elizabeth, and entitled, 'An Act to enable and make good a Conveyance and Assurance made of the manors of Chipping-Onger, Northokenden, Southokenden, and other lands in the county of Essex, and Beaves-Marks, alias Buries-Marks, in London, by James Morris, esq. and Gabriel Poyntz, esq. to John Morris, alias Poyntz, and his Heirs; and to establish the said manors upon the said John Morris, alias Poyntz, and his Heirs, according to the said Conveyance.' Whereas in truth there neither is, nor ever was any such act of parliament. And for forging and counterfeiting his hand-writing, and subscribing to the said copy, John Brown, '*Cleric. Parliamentorum.*' And the better to colour their lewd practices, have charged the said John Brown with the loss of the said Record, and denying of his own hand. And whereas sir Adam Littleton, bart. who had good title to part of the said Manors and Lands, as in right of Dame Audery, his wife, whose inheritance thereunto was sought to be impeached by the said Copy of the said pretended Act of Parliament, complained likewise against the said persons before their lordships, for the said Forgery and Publication; in that the said John Morris, Leonard Darby, John Harris, and Isabel Smith, did produce the said Copy at Chelmsford, at Lent-Assizes, in 1646, for the county of Essex; at a trial in an *Ejectione Firme*, brought by Thomas Smith, husband of

the said Isabel, and Lessee of the said John Morris, against Josias Clarke, Tenant to the said sir Adam Littleton, of part of the said lands contained in the said pretended Act, and did plead and affirm the same to be a true Copy of an Act of Parliament: And the said Darby and Harris did falsely and perjuriously swear in open court at the said Trial, that they had examined the said Copy, by them produced, with the Record of the said pretended Act, in the office of the clerk of the parliament; and did there also falsely and perjuriously swear, that they did shew that Writing to the Clerk of the Parliament, and that he did acknowledge the said Writing to be his own hand; whereas in truth the said subscription to the said pretended Act of Parliament is counterfeit, and none of the said Clerk of the said Parliament's hand. And the said sir Adam further complained of an Exemplification under the Great Seal of England, for countenancing the said forged Copy of the said pretended Act, by some undue means by the said parties thereunto affixed, of the parties shewing, whereof proof was made before their lordships.

All which being crimes of a very high and transcendant nature, and do concern the public justice of the kingdom, and of this honourable house, the supremest judicatory of this kingdom: that Acts of Parliament, the highest records in this kingdom, should be framed, invented, forged, and given in evidence, and published as true acts of Parliament; and the hand of the clerk of the parliament, a sworn officer, forged, counterfeited, and subscribed to the same; as that if such a bold and audacious act should not be severely punished, no man can be safe in his life, person or estate: The said John Brown, and sir Adam Littleton, desired that the persons aforesaid might forthwith answer the said Charges; and that their lordships would indict such exemplarily punish-

ment upon the offenders, as may deter the like attempts and lewd practices in others, and give such fitting reparations as their lordships in their wisdom should think meet.

Whereupon the persons aforesaid put in their Answers to the premises, and pleaded Not Guilty; and after the case had been divers days fully heard by Counsel on both sides, and Witnesses produced at this Bar, and the whole matter after thoroughly weighed, debated, and fully considered of by the house; the Lords in Parliament assembled, being fully satisfied of the guilt of the said persons, for the aforesaid high crimes charged against them, do award and adjudge,

1. "That the said John Morris, alias Poyntz, shall pay as a fine to our sovereign lord the king the sum of 1,000*l*. Isabel Smith 200*l*. Leonard Darby 400*l*. and John Harris 400*l*. 2. That the said parties shall pay to John Brown, esq. Clerk of the parliament, for his damages, 500*l*. 3. That all the said parties shall, before their enlargement out of prison, be bound to their good behaviour during their lives, before some one of his majesty's justices of his bench at Westminster, with good sureties. 4. That the said Copy of the pretended Act of Parliament, falsely affirmed upon oath, to have been subscribed with the name of the said Clerk of the Parliament, entitled, 'An Act to enable and make good a conveyance and assurance, made of the manors of Chipping-Unger, Northokenden, Southokenden, and other lands in the county of Essex; and Beaves Marks, alias Buries Marks, in London; by James Morris, esq. Gabriel Poyntz, esq. to John Morris, alias Poyntz, and his heirs, and to establish the said Manors upon the said John Morris, alias Poyntz, and his heirs, according to the said conveyance;' is hereby declared to be forged and counterfeit; and is by their lordships adjudged and decreed to be for ever damned and cancelled, and never to be pleaded in any court or cause whatsoever: nor to be admitted to be given in evidence; there being no record of such pretended Act of Parliament to warrant the same. 5. That all the said several Persons hereby adjudged guilty of the said Crimes, shall ever hereafter be made incapable to be witnesses in any cause whatsoever. 6. That John Brown, esq. Clerk of the Parliament, is, in the judgment of this house, free and clear of and from all and every the aspersions, falsities, and charges of the said John Morris, alias Poyntz, Isabel Smith, Leonard Darby, and John Harris, charged, uttered, divulged, and given out by them against him, concerning the matters herein mentioned. And that this judgment shall be openly read and published in the face of the county of Essex, at the next assizes to be held for that county. 7. That the said parties shall bring, or cause to be brought into this house by the first day of October next, one Exemplification under the Great Seal of England, concerning the manor of Little Munden, in the county of Hertford; and the aforesaid exem-

plication of the said counterfeit Act of Parliament, to which the Great Seal of England is charged to have been unduly and fraudulently affixed, that so the aforesaid forged Exemplification may be cancelled and vacated. 8. That they shall be imprisoned during the pleasure of this house.

JON. BROWN, *Cler. Parliamentorum.*"

Die Martis, 2d Die Novem. 1647.

Whereas the Lords in Parliament assembled, upon the 21st of September last, gave Judgment concerning a Copy of a pretended Act of Parliament, entitled, 'An Act to enable and make good a Conveyance and assurance, made of the manors of Chipping-Unger, Northokenden, Southokenden, and other lands in the county of Essex; and Beaves-Marks, alias Buris-Marks, in London, by James Morris, esq. Gabriel Poyntz, esq. to John Morris, alias Poyntz, and his heirs, and to establish the said manors upon the said John Morris, alias Poyntz, and his heirs, according to the said conveyance;' and declared the same to be forged and counterfeit, and there to be damned and cancelled, as by the said judgment more at large appeareth.

And whereas Dame Audery Littleton, late wife of sir Adam Littleton, deceased, sir Folke Grevil, knt. and Maurice Barrow, esq. by their petition exhibited before the Lords in Parliament, complained, that notwithstanding the said Judgment, one Isabel Smith, a person sentenced by their lordships, and committed to Newgate for the said Forgery, having procured the said forged Act of Parliament, and other forged writings, viz. three Fines of the lands contained in the said forged act, and a forged Pleading, setting forth the uses of the said forged fines, to be written in parchment; and having by some slight made them to seem as if they had been written long since, did foist and shuffle in the same amongst other Evidences, and Writings remaining in the treasury of the late Court of Wards: and pretending the same to be found there, obtained copies thereof under the hand of Mr. Audely, clerk of the said court, hoping thereby to gain some credit and authority to the said forgeries, and further to impeach the titles of the petitioners.

To which Petition the said Isabel Smith put in her Answer, and a day was appointed for hearing the same. At which day the said Isabel Smith, being present at the bar, and not making good any of the particulars in her said Answer, nor giving any satisfaction to such questions as were by their lordships demanded of her concerning the same: And the said several Writings, after full examination by hearing of counsel, and witnesses produced; and also upon view of the said Writings, (being by their lordships' order brought into the house) manifestly appearing to their lordships to be gross forgeries: The lords in parliament assembled to declare, and adjudge;

"That the said parchment Writings, one whereof purporteth a Fine pretended to be le-

vied at St. Albans, "a die sancti Martini in quindecim dies," anno 37 Eliz. between James Morris, esq. and John Morris, alias Poyntz, his son, Plaintiffs, and Gabriel Poyntz, esq. and William Cutts, Defendants; of the manor of Chipping-Onger, and other lands and tenements, with the appurtenances, in Chipping-Onger, in the county of Essex: One other whereof purporteth a fine pretended to be levied at St. Albans, "a die sancti Martini in quindecim dies," anno 37 Eliz. between James Morris, esq. and John Morris, alias Poyntz, his son, Plaintiffs; and Gabriel Poyntz, esq. and William Cutts, Defendants; of the manors of Northokenden, Poyntz, and Groves, with the appurtenances, and of divers messuages, cottages, mills, lands, meadows, pastures, and other hereditaments in Northokenden, alias Northokenden, Southwokenden, alias Southokenden, Avely, Upminster, alias Upmister, Southweal, Brentwood, alias Burntwood, Warley, alias Warley Magna, Childerditch, Eulfan, Bownton, alias Buntton, East Thornedon, West Thornedon, West Thurrock, Grays Thurrock, Chawdwell, Styfford, alias Stiford, Horne-church, Basseldon, and Granham, and of the rectory of Northwokenden, alias Northokenden, with the appurtenances, in the said county of Essex.

"One other whereof purporteth a Fine pretended to be levied at St. Albans "a die sancti Martini in quindecim dies," anno 37 Eliz. between James Morris, esq. John Morris alias Poyntz, his son, Plaintiffs; and Gabriel Poyntz, esq. and William Cutts, esq. Defendants; of four Messuages, six gardens, and two acres of land with the appurtenances, in the parish of St. Catherine Cree-church, London.

"One other of the said Parchment writings purporteth a pleading, setting forth the uses of the said fines, and beginning in these words, (viz.) Essex. ss. 'In memorandum de Banco, anno tricesimo octavo Elizabeth, viz. Inter record. termini sancti Trinitatis Rollo xxi. ex parte recordationum in ter. manen. inter alia continetur ut sequitur, viz. memorandum quod nuper invenitur in quodam Rollo extract. de finibus, et issuis Banci in Termino Sancti Michaelis annis regni dominæ nostræ Elizabethæ, tricesimo sexto et septimo, quod Gabriel Poyntz, esq. &c.'

"And one other whereof purporteth a copy of a pretended act of parliament, intitled, "An act to enable and make good a conveyance and assurance, made of the manors of Chipping-Onger, Northokenden, Southokenden, and other lands in the county of Essex: and Beaves-Marks alias Buries-Marks in London; by James Morris, esq. and Gabriel Poyntz, esq. to John Morris alias Poyntz, and his heirs, and to establish the said manors upon the said John Morris alias Poyntz, and his heirs, according to the said conveyance: Are hereby declared to be forged and counterfeit, and are by their lordships adjudged and decreed to be for ever damned and cancelled, and never to be pleaded, or admitted to be given in evidence in any court, or cause whatsoever; there being no re-

cord of any such fines, pleading, or act of parliament to warrant the same; nor any term then held at St. Albans, when the said fines were pretended to be levied there.

"And it is further ordered by the lords in parliament assembled, that the said Isabel Smith shall by the 27th. of November next bring, or cause to be brought into this house, the copies of the said parchment writings, (pretended to be found in the treasury of the Court of Wards) subscribed by the said Mr. Awdely, that so the same may be cancelled and vacated.

JOHN BAOWS, Cler. Parl.

Essex, ss. 'In memorandum de Banco, anno tricesimo octavo Elizabeth, viz. inter Record. Terminum Sancti Trinitatis Rollo xxi ex parte Recordationum in Thesaur. manen. inter alia continetur ut sequitur, viz.

'Memorandum quod nuper invenitur in quodam Rollo extract. de finibus et issuis Banci et Terminum Sancti Michaelis annis regni dominæ nostræ Elizabethæ tricesimo sexto et septimo, quod Gabriel Poyntz, esq. fecit cum prædicta dominæ regina finem pro concordia cum Jacobi Morris, esq. et aliis de Plito condic. de Manor Chipping-Onger, alias Anger ad Castrum, cum appurtenanc. &c.'

5th Novem. 1647.

I have searched the Records of the Common Pleas, de Terminum Sancti Trinitatis. anno tricesimo octavo reg. Eliz. rollo vicesimo primo, and do find that there is no inrollment of any such Record there, as is above-mentioned. Per JOHANNEM COCKS, Cleric. Thesaur. de Com. Banco.

I have searched in the Treasurer's Remembrancer's Office in the Exchequer, amongst the Records of Trinity Term, anno xxxviii. Reginæ Elizabeth. Roll xxi. but do not find that there is any such Record or Inrollment, as is above-mentioned. T. OSBORNE.

6th May, 1647.

Memorandum, that I Francis Blake, Keeper of the Books for the searchers of fines, and of the Records thereof in the Chirographer's Office, have made diligent search in the said Books, and amongst the said Records of Michaelmas-Term, 35 and 36 Eliz. and all the Terms after, till Hillary 38 Eliz. and I can find no fine at all from Gabriel Poyntz and William Cutts, or either of them, to any person whatsoever, of any lands in the counties of Essex or London. And moreover, I find by the said Records, that Michaelmas Term, 36 and 37 Eliz. was held at the city of Westminster, and not at the town of St. Albans. All which I do hereby, at the request of sir Adam Poyntz, alias Littleton, bart. certify to all whom it may concern. F. BLAKE.

Here end the Proceedings of the Lords against them.

Soon after a short Breviate of Mr. John Morris's Case was drawn up, and delivered to

his excellency sir Thomas Fairfax, by divers of the Parliament's agents.

"May it please your Excellency; Being deeply oppressed in our spirits, and overburthened in ourselves, at the manifold and doleful outcries and complaints of the people, in all parts of our quarters where we come, uttered against the daily pressures and inroads that are made by prerogative and arbitrary violence upon their common rights; and in particular, the cry and miserable moan of certain oppressed Commoners, to wit, of John Poyntz, alias Morris, esq. Isabel Smith, John Harris, and Leonard Darby, coming unto our ears, that we could not, but, as in duty we are bound, deeply represent their miserable condition, as fellow-feelers of their oppressions, and persons liable (when we come into their single capacity of Commons) to the said mischief; and therefore conceiving it our duty to contribute our utmost endeavours for the remedy of the same, we could not but unburden in some measure our spirits unto your Excellency in their behalfs, who in such a horrid and barbarous manner have been abused and supplanted of their common rights, by acts of violence and force, committed by John Brown, Clerk unto the House of Lords, and his accomplices, under the colour of several Orders surreptitiously by misinformations gained from the said House, to the high usurpation and abuse of the name and authority of parliament, in permitting the image thereof upon his own prerogative, outrage and violence, to the total ruin and supplantation of the just freedoms, and birth-right inheritance of the said persons, as the several papers thereunto subjoined, for the full information of your Excellency, do demonstrate. And for more certain confirmation of our premises, represented by the same, be pleased to consider, that whereas the abovesaid persons are accused, condemned, and sentenced by the lords (surprized by Brown's misrepresentations and delusions) to pay 2,500*l.* fine, and suffer imprisonment, contrary to the regular course of the laws, during the pleasure of the said House, for forging and framing a copy of an act of parliament, touching the estate of the said John Poyntz alias Morris, pretended to be taken out of the office of the said John Brown, with his hand thereunto; no such original record as Brown pretendeth is to be found in his office: what since the said accusation, another original record of the said act of parliament, with other writings and evidences for the said estate, is found in the court of wards, and they have

gained copies thereof, examined and subscribed by the master of the said court and his clerks, the which, with their hands thereunto, are herewith presented; and concerning the truth thereof, three of us can also give it upon oath, that the wife of one Godfrey Cade, now prisoner in the Fleet, did declare unto us, that the said John Brown went to the Fleet unto her husband, and gave him twenty-five shillings in hand, and promised him five pounds more, and his enlargement, to swear at the Lords bar, that he forged the copy of the said act of parliament, and counterfeited the clerk's hand unto it; and the said Cade did also confess the same.

"Wherefore we humbly implore that your Excellency would be pleased to grant the said distressed persons your letter of request unto the parliament, according to their petition, herewith directed to your Excellency, that the said persons, and their adversaries, may be left to the free course and trial at common law; and that in the mean time, till the controversy concerning the estate be decided at law, the said persons may enjoy their enlargement upon bail, without any further trouble or durance, and the execution of their severe sentence be suspended, and the said Poyntz, alias Morris, enjoy peaceable possession of the said estate, like as all his ancestors, from the days of queen Elizabeth, have done before him. Which request is so reasonable and just, and their condition so miserable, desperate, and dangerous, and of such concernment to the whole commonwealth, that no man, if such exorbitances be not stopped and curbed, can have any security in his estate or liberty, that we cannot but promise to ourselves your Excellency's commiseration of their condition, and readily assent unto their just suit. Thus we humbly take our leave, beseeching your favourable construction upon our boldness, and remain your Excellency's most humble servants and soldiers,

Lie t. Gen. R.	{ Robert Everard.
	{ George Sadler.
Com. Gen. R.	{ George Garret.
	{ Thomas Beverly.
	{ Matthew Wealy.
Col. Whaley's.	{ William Russel.
	{ William Sampson.
	{ Richard Daley.
Col. Rich's.	{ William Hudson.
	{ John Dober.
Col. Fleetwood's.	{ William Priar.
	{ William Bryan."

We do not find that any thing farther was done in this business.

180. Proceedings upon a Charge of High Treason against Sir JOHN GAYRE, knt. Mayor of the City of London, THOMAS CULLAM, Alderman and one of the Sheriffs of London, and JAMES BUNCE, JOHN LANGHAM, and THOMAS ADAMS, Aldermen of London, for countenancing and abetting Force and Tumults against the House of Commons: 23 CHARLES I. A. D. 1647. [6 and 7 Rushw. 3 Cobb. Parl. Hist.]

BY way of introduction to this Charge a brief account of some preceding transactions may be acceptable.

On the 27th of July, 1647, a Petition was presented to the House of Commons from the Lord Mayor, Aldermen, and Common Council of the city of London, in these words:

The humble Petition of the Lord Mayor, Aldermen, and Commons of the City of London in Common Council assembled: To the right honourable the Lords and Commons assembled in High Court of Parliament. Whereunto is annexed two Petitions; the one entitled, 'The humble Petition of divers well-affected Citizens of the City of London,' the other entitled, 'The humble Petition of divers Young Men, Citizens, and Apprentices of this honourable City.' They are as followeth, viz:

To the honourable the House of Commons assembled in High Court of Parliament: The humble Petition of the Lord Mayor, Aldermen, and Commons of the City of London in Common Council assembled,

"Humbly sheweth; That the Petitioners have, by Ordinance of parliament dated the 23rd present, taken notice of the pleasure of both houses for constituting a new Committee for the Militia of the city of London and the liberties thereof, and of all other places within the Lines of Communication and the Weekly Bills of Mortality, and for determining of a former Ordinance for the Militia of this city, &c. dated the 4th of May last; which being taken into serious consideration, the Petitioners could not but call to mind how far both Houses of Parliament had formerly honoured the City, when they first established the Committee for the Militia, and since enlarged or altered the same, to take the sense of this Court before they finally resolved thereupon; which confidence the Petitioners are not conscious to themselves to have forfeited. And next, being sensible by two Petitions presented to this court (the copies whereof are annexed) the one entitled, 'The humble Petition of divers well-affected Citizens of this City of London,' and the other entitled, 'The humble Petition of divers Young Men, Citizens, and others Apprentices of this City.' What a general distemper this sudden change hath already made, and may further raise in this city; besides that hereby the city is for the present put out of all regular posture of defence.—The Petitioners

could not but return unto this honourable house, and humbly and earnestly pray, That the Militia which was established by Ordinance of the 4th of May last as aforesaid, and then ordered to continue for one whole year, may be re-established; that so the present fears and distempers in the city may be dispersed and appeased: Whereunto, as the Petitioners humbly conceive this to be the only present safe means, next under the mighty hand of God, so they will not doubt, but that the said Militia, as hitherto they have done, will in all things perform their duties according to their trust. And the Petitioners shall pray, &c."

To the right honourable the Lord Mayor, the right worshipful the Aldermen, and Commons of the City of London in Common Council assembled: The humble Petition of divers well-affected Citizens of the City of London,

"Sheweth; That whereas we have lifted up our hands to the High God, for the reformation and defence of Religion, his majesty's just power and authority, the Liberties of the Subjects, and the Privileges of Parliaments; and seriously considering the late Transactions to violate all these, and to weaken the zeal and forwardness of this city, and this honourable court in the maintenance of the same, by endeavouring to remove the Present Militia, confirmed by authority of a Free Parliament for a year, and made choice of by this honourable court.—In this streight and exigency we are bold in all humility, yet with all earnestness, to pray, That this Honourable Court would sadly weigh the present dangers; and, as in former times it hath been your honour to be instrumental for the preservation of this miserable and dying kingdom, by the interposition of your courage, and power, and wisdom, in a time of need, so you would not suffer it to be buried in perpetual oblivion and reproach, by yielding up that Militia, which, by the good providence of God, and the authority of a Free Parliament, hath been invested in your hands, the only visible means, under God, we have now left for the security of our Religion, Lives, and Liberties."

To the right honourable the Lord Mayor, the right worshipful the Aldermen, and the worshipful the Commons in Common Council assembled: The humble Petition of divers Young Men, Citizens, and others Apprentices of this honourable City,

"Humbly sheweth; That your Petitioners being sadly affected with the distractions of these times, wherein divers discontented persons, for the advancement of their own interests, labour to sow new seeds of division and discord among us, whereby Incendiaries are encouraged, the well-affected discountenanced, the privileges of parliament violated, the public worship of God slighted, the liberties and properties of the faithful subjects of this kingdom, and especially of this city, much endangered, and the long-desired-for end of these Troubles (by his majesty's gracious compliance with, and his safe and honourable return to his parliament, which we hoped was almost obtained, now retarded, and for the present altogether frustrated) have presented their humble Petition to both Houses of Parliament, a Copy whereof is hereunto annexed, the which they have thought it their duty likewise to tender unto this honourable Court; being confident, that as their desires in these their humble Addresses arise from no other ends whatsoever but the glory of God, and the discharge of their consciences, in pursuance of that Solemn League and Covenant which lies upon them, 'To endeavour to their utmost, in their places and callings, to use all lawful ways and means for the conservation and maintenance of the just rights and privileges of Parliament,' lately so much violated, 'the preservation and defence of his majesty's royal person and authority, together with the true Religion and Liberties of this kingdom, and for the discovery and bringing to condign punishment all evil instruments whatsoever, which labour, by fomenting groundless Fears and Jealousies, to divide and make parties amongst the people, thereby to retard the Settlement of Church and State:' so we doubt not but this honourable Court (who have been instrumental to invite us, both by example and persuasion (according to several Ordinances and Declarations of Parliament) to engage ourselves to the prosecution of the said ends, wherein you have already done very much, to your everlasting praise and commendation) will still with all reality, constancy, and undaunted magnanimity, pursue the same, and likewise encourage those that shall, according to their duty, labour to promote the same ends. Wherefore we humbly pray, That this honourable Court would be pleased to use their utmost endeavours, by their Addresses to the Parliament, and otherwise, as they in their wisdom shall think fit, for the furthering of your Petitioners desire contained in the above-mentioned Petition.—We cannot likewise but with all thankfulness take notice of what this honourable city has done for the putting in execution of several Ordinances of Parliament, That none be put into any place of trust, either in church or commonwealth, but such as have taken, and now stand well affected to the covenant, to which we are confident that you will still adhere.—And whereas there have been, and still are, several factious persons who stile them-

selves 'The Well-affected of this City,' (though unworthy of that name) who labour to traduce the actions thereof, thereby to bring an odium upon it, and to lay it open to their malice; a fresh instance whereof we have in a Petition presented to the parliament, pretended to be the Petition of the Young Men and Apprentices of the City, as likewise by a Petition pretended to be presented to sir Thomas Fairfax, the which we are ready to produce, and refer the consideration of them to this honourable Court: And further pray, That as both the Militia of the City hath been legally chosen by this honourable Court, according to Ordinance of Parliament, and the Common Council legally chosen by the several Wards (according to the ancient custom of this City) you would be pleased to retain the same power, both civil and military, in your own hands. And that you would be pleased, for the prevention of many imminent dangers to which this City may be liable, by reason of these distractions, to take such effectual and speedy course, for the safeguard and defence thereof, that the fear either of any mutiny within, or any unwarrantable power from abroad, may in some measure be taken away, whereby trade (the main support of this City, now mightily impaired) may be again revived, and the franchises and liberties of this honourable City (to which we are the apparent heirs) maintained and defended. And as your Petitioners are in duty bound, both by that relation which they stand in to the honourable City, as by that solemn Engagement whereinto they have entered, so they will be always ready to hazard their lives for the defence thereof, and not suffer themselves directly or indirectly, by any terror or persuasion, to be drawn from their duty herein."

The humble Desires of the Citizens, Young Men, and Apprentices of the City of London; presented to both the Honourable Houses of Parliament, July 26, 1647. Together with the Ordinances of Parliament.

"1. It is our humble Desire, in regard Religion, our Lives, Liberties, and Estates are so much endangered, and the peace and safety of this city and kingdom, that the pretended Ordinance for the Change of the Militia of the City of London may be presently repealed before the rising of the houses; and that former Ordinance, that was conferred for a year by a Free Parliament, upon the Lord Mayor, Aldermen, and Common Council, and by them legally chosen, may be established: In which regard we do conceive, that no justice, though it run in never so free a channel, can lawfully dispossess them of it, unless it shall appear to be abused contrary to the trust reposed in them. 2. It is likewise desired that the City of London may immediately be vindicated against a late pretended Declaration of both Houses, which declares all those Traitors, and so to forfeit life and estate, who shall, after publication thereof, act thereupon to get Subscriptions, and that

the said Declaration be now presently reversed and cancelled. 3. That both Houses of Parliament do presently make an Order up on some special penalty, for the calling in of all their members of either houses to discharge the trust the kingdom has reposed in them, especially Eleven late accused Members, against whom there has been nothing proved of their accusation to this day. That yet again we may come to be so happy, as to enjoy the healing influence of a full and free parliament, in these distracted times.—These particulars we cannot but insist upon, since the distractions amongst us begin to grow so high, and the honour and privileges of parliament, the peace and safety of the city and kingdom are so greatly violated."

Much time was spent in this Business, and at last the Lords and Commons concurred in two Ordinances, as follow :

Die Lunæ, 26 Julii, 1647.

"Be it ordained, by the Lords and Commons in parliament assembled, That the Declaration of the 21<sup>th</sup> of this instant July, which declares all those Traitors who shall alter publication thereof act thereupon to get Subscriptions, be null and void, any thing in the said Declaration to the contrary notwithstanding."

On July 24<sup>th</sup> 1647, the Houses of Lords and Commons had voted the following Declaration: "The Lords and Commons having seen a printed Paper, entitled, 'A Petition to the right honourable the Lord Mayor, the right worshipful the Aldermen, and Commoners of the City of London, in the Common or Guild-hall of the City of London assembled, under the name of divers Citizens, Commanders, Officers, and Soldiers of the Trained-Bands, Auxiliaries and others, Young Men and Apprentices, Sea Commanders, Seamen and Watermen.' Together with a dangerous Engagement of the same persons, by oath and vow, concerning the king's present coming to the parliament, upon terms far different from those which both houses, after mature deliberation, have declared to be necessary for the good and safety of this kingdom, casting reflections upon the proceedings both of the Parliament and Army, and tending to the embroiling the kingdom in a new war: And the said Lords and Commons, taking notice of great endeavours used by divers ill-affected persons, to procure Subscriptions thereunto, where by well-meaning people may be misled: Do therefore declare, that whosoever after publication or notice thereof, shall proceed in, or promote or set his name to, or give consent that his name be set unto, or any way join in the said engagement, shall be deemed and adjudged Guilty of High Treason, and shall forfeit life and estate, as in cases of High Treason accustomed." They also ordered that it should be published forthwith, by beat of drum and sound of trumpet.

July 28. The Common Council sate in Guildhall again, and read a Letter from his ex-

cclency sir Thomas Fairfax, setting forth his good affection and tender care of the good of the City, and shewing his great dislike of the Petition, and the means used to promote the same. At the same time many Young Men, and others, attended the Common Council to express their readiness to stand up for the just privileges of the City, and defend it against all Opposers.

A Letter was then drawn up, and a messenger dispatched to his Excellency, and six commissioners appointed to go after the next morning. In the Letter the Lord Mayor, Aldermen, and Common Council, declare their inclinableness to Peace, intreating his Excellency, That the Army might not advance this way, nor intermeddle with the rights and privileges of the City, conceiving that their strengthening of the City for the safety and preservation thereof, was no just cause to provoke the soldier: And as for the Petition, the Parliament had already declared their sense thereof, and therefore it was needless for them to do it, and the rather, for that it had never been formally presented to them.

July 29. This day came a Letter from his Excellency sir Thomas Fairfax, to the Lord Mayor, Aldermen, and Common Council of the City of London; viz.

"My lords and gentlemen; You may please to remember the forward compliance of this Army with your desires, to remove to this distance, and that upon the assurance you gave them of your concurrence with their declared desires, for the settling of the liberty and peace of this kingdom, (against which you never yet offered us one exception, or any ground of dissent) as also of your great tenderness and resolution to secure the parliament and their privileges from any violence or attempt; the chief reason given us of your late listing of new forces, and wherein we did most acquiesce.—That upon this confidence, we had disposed of the Army into several parts of the kingdom, for the ease of the whole, some of them to above 100 miles distant; we had given up ourselves to the effecting such proposals as might tend to the comfortable settlement of this poor kingdom, and we were in a hopeful way for speedy relief for Ireland.—We cannot then but be deeply sensible of the unparalleled violation acted upon the Parliament upon Monday last, by a multitude from your City, because therein the Guards sent from the City, did not only neglect their duty for the security of the parliament from such violence, and the whole City to yield any relief to the houses in that extremity, but I am assured from eye and ear witnesses, that divers of the Common Council gave great encouragement to it, which doth not only gainsay your former professions, but does violence to those many obligations, that of your charter, protestation, and sundry other ways laid upon you to protect the parliament: For my part, I cannot but look on you (who are in authority) as accountable to the kingdom for your present interruptions of that

hopeful way of Peace and Settlement things were in for this nation, and for relieving Ireland, occasioned by a late destructive Engagement, especially by the latter prodigious and horrid force done upon the parliament, tending to dissolve all government; upon which score, we and the whole kingdom shall have cause, to put every thing of the like nature that may happen to the parliament, to any who are friends to them and this army, except by your wisdom, care, and industry, the chief actors in the premises may be detected, secured, and given up to the procuring of justice for the same, and the best endeavours used to prevent the like for the future. And so I rest, your most assured friend to serve you,

Bedford, July 29, 1647. THOMAS FAIRFAX."

**A DECLARATION of the Lord Mayor, Aldermen, and Commons of the City of London in Common Council assembled.**

"How, and by what authority, and under what pretences, his majesty was surprized at Holmby, where he was placed by consent of both kingdoms; and how thence removed, and at last brought into the army, under whose power his royal person hath ever since been kept, and carried to and fro, notwithstanding that his surprizal was disowned by the general for himself and all the officers about him, and for the body of the army, and that since both houses of parliament had required his royal person to be brought to Richmond, and there left in the hands of the Commissioners of Parliament who attended him at Holmby: Contrary to all which, the army yet desire, that no place might be proposed for his majesty's residence nearer London than where they would allow the quarters of the army to be. All these things we doubt not but by this time are so evidently known and apparent to the whole kingdom, that we should not need to insist upon any particular discovery thereof: and we believe that the right understanding and well-affected people of this kingdom, who remember and still adhere unto the Covenant which they have made with God, have all along observed in what manner the army, in the posture whereinto they have put themselves, have ever since proceeded with the parliament and city, and sought to improve their interests throughout the whole kingdom. We for our parts shall not presume to deliver any thing of our sense upon that which hath been altered, acted, or consented unto by both houses, at the instance, interposition, or importunity of the army; but only desire hereby to give a true account unto the kingdom upon what grounds and reasons we have been led to concur with the army in many of their late desires to the parliament (which happily may have been looked upon with some admiration), and what our just ends and aims were in sending down and continuing a committee of aldermen and citizens in the army all this time.

"The City Remonstrance and Petition of the 26th of May, 1646; our Petition and Repre-

sentation of the 19th of December, 1646; and our Petition of the 17th of March, 1647; in the two last of which the disbanding of the army was particularly and especially insisted upon, have, we are confident, satisfied all moderate and unbiassed men, that we were desirous upon the first opportunity which God gave us, to express our great zeal for the settlement of peace in this kingdom, by establishing of the true religion, restoring his majesty to his just rights and authority, maintaining the privilege of parliament, easing the great charge of the kingdom, securing the people in their lawful liberties and properties, and relieving our distressed fellow subjects and protestants in Ireland; and in order hereunto, we have given two such signal testimonies, in that we were the principal leaders and encouragers to the first advancing of 200,000*l.* towards the satisfaction of our brethren of Scotland, when they had agreed to return to their country, and to this latter sudden raising of the like sum of 200,000*l.* for the payment of this army, and the affairs of Ireland, when the parliament had resolved upon the disbanding and disposing of so many of the army as the kingdom had no further use of, as we will hope that all men have been clearly convinced of our sincere intentions, as much as lay in us, and as far as it was fit for us to appear therein, to improve our utmost endeavours to make the way open to a happy composure of all things. And when the army refused to disband, and had possessed themselves of the person of the king, thereby justifying that bold seizure of him, which the general at first disclaimed as aforesaid; and that the army was upon their march, or, as they called it, drawing near to London; and that this city was in a manner summoned by a letter of the 10th of June last, under the hands of the general, and other prime officers of the army, although the parliament were at that time sensible enough of the strange carriage of the army towards them; and notwithstanding the army's lying so near to the city did very much hinder and impair the trade thereof, to the great prejudice of the city in particular, and of the kingdom in general: yet we, to shew how much we were desirous to avoid the occasion of a new war, did make bold often to address ourselves to the parliament and joined with the army in many of their demands to the honourable houses, sent down a committee of aldermen and citizens to reside in the army to maintain all good correspondence on both sides; and although the army a long time hovered near the parliament and city, we still omitted no endeavours or good offices on our parts, as far as we could well appear for them, to manifest how careful we were to uphold a good understanding between the army and the city. What violation the privileges of the house of commons suffered when the eleven accused members were enforced by the army to withdraw themselves, after it was declared upon the question, 'That by the laws of the land, no Judgment can be given to suspend the Members, or any of them, from sitting in the

'house, upon the papers presented from the army, before particulars produced, and proofs made.' And in what manner the parliament have (to satisfy the army) as it were renounced all foreign aid, under what pretence soever, even such as are under the same covenant with them. These things, we say, being transacted by the representative body of the whole kingdom, and public every where, it is evident what great influence (to say no more) the army hath throughout had upon the counsels of parliament: and for this city, it hath suffered itself to be so bounded by the army in relation to any preparation for its own guard and defence, whilst yet the army is recruited, and the soldiery of the whole kingdom invited to join with them, that the city hath been very much exposed to hazard and danger thereby. Yet, although this army be invested with the whole power of the land forces of this kingdom under pay of the parliament, when there is nothing left that can probably make any considerable resistance, and that it was expected they should fall roundly upon those things which concerned the public only, as they professed from the beginning: the army, contrary to that which they declared in their said letter of the 10th of June last unto the city, and their Declaration or Representation of the 14th of June, 'That they would not go beyond their desires at that time expressed, and for other particulars would acquiesce in the wisdom and justice of the parliament': now demand the Militia of the city of London, which had been established by ordinance of parliament of the 4th of May last, to continue for one whole year in the hands of such as by their authority were nominated by the lord mayor, aldermen, and commons in common council assembled, and desire the same to be put into other hands; and so far prevail with the parliament, that they immediately consented thereto, although formerly they never made choice of, enlarged, or changed the Militia at London, but they still were pleased first to communicate the same unto the court of common council of this city: but we humbly and thankfully acknowledge, that upon our humble Petition the parliament presently recalled the same, and re-established the Militia appointed by ordinance of the 4th of May last as aforesaid. And therefore being thus awakened by this unexpected and undeserved interposition of the army in the Militia of the city, which we must protest to be subject to no other cognizance but of the king and parliament; and having experience how strongly the army have ever insisted upon any thing they once demanded, we cannot but foresee how far our proceedings in this business may be misrepresented to the kingdom, and misunderstood by those, who from the great professions of the army, have, or do expect from them a speedy settlement of the peace of the kingdom, and so may be possessed with something, as if we, by contending for our Militia, did seek to retard the same. And this hath cast us upon this Declaration, wherein although we have unwilling-

ly been enforced to touch upon some proceedings of the army with the parliament and this city, which preceded their intermeddling with our Militia, yet we could not omit the same, that we might make it clear to the kingdom what little reason the army had, when they had obtained so much from the parliament, and that the city had so far complied with them, at last to demand the change of that Militia which never moved in any thing without our cognizance, and so could never give the army any just cause of exception. And we well hope, that all the kingdom will be fully satisfied hereby how extremely desirous we have been all along to avoid giving any just cause of offence or provocation, and be convinced that we could not in honour do less than we have done to preserve our interest in so great a part of our government. For our parts, we call God to witness, we have a brotherly sense of the many great pressures under which the country must needs be, by quartering the army; and when the army shall be ready, of which they have given the kingdom so great hopes, to offer any thing to the parliament, for the settlement of the public, none shall more readily and zealously join with them therein than we, who from the bottom of our hearts abhor the thoughts of a new war. But if this vindication of our right in the Militia of the city shall be thought by the army to be a just cause for them, either to divert them from falling speedily upon that which concerns the public peace, or to cast them upon extraordinary courses, let God, the kingdom, and the whole world, be judge between them and us.

"As for that Petition and Engagement which hath been lately set on foot in the name of 'divers citizens, commanders, officers and soldiers of the trained bands and auxiliaries, the young men and apprentices of the cities of London and Westminster, sea commanders, seamen, and watermen, together with divers other commanders, officers, and soldiers within the line of communication and parishes mentioned in the weekly bills of mortality,' directed unto the Lord Mayor, Aldermen, and Commons, in the Common or Guild-Hall assembled. Upon which the army also have by their letter of the 23d of July last, given us their sense. To this we have no more to say, but that, for as much as we can collect, we find this Petition and Engagement to be occasioned from the intelligence which came from the army, that they would demand the alteration of the militia of this city; at which if our city, and other the inhabitants, took the alarm, the distemper which it begot cannot be charged on the government of the city: Neither can we see why the army should take notice thereof, it being only intended to the common-hall, but never presented, even as the petition of their soldiery was to their general, which being taken notice of by the parliament, as it was in agitation, was then so deeply represented by the soldiery, that from thence hath followed the putting of the army into that pos-

ture whereſn now it is. Having thus cleared ourſelves from any deſign to embroil ourſelves or the kingdom in a new war, we find ourſelves obliged, by which alſo we hope the whole world will be the more fully ſatisfied of our deſires for a ſpeedy, firm, and juſt peace, to declare unto the whole kingdom the bottom of our hearts and affections, as in relation to his majeſty, whom we have always, and ſhall ever acknowledge to be our true and only ſovereign, although his royal perſon have, during theſe diſtractions, been divided from us. Our Remonſtrance, Representation, and Petition before-mentioned, and a later Petition to both houſes on the 17th of March laſt, preſently after his majeſty came to Holmby, have, we doubt not, already juſtified us, that in all our addreſſes to the parliament, upon all occaſions which did concern the public, we have ever remembered to expreſs our earneſt deſires for his majeſty's honourable and ſpeedy return to his houſes of parliament; and ſince his ſurprizal we have with much longing attended what the army would propound concerning his majeſty in particular, according to the greater expectation which they have raiſed in the people, from that which they have hinted in their declaration or representation, and other papers of their intentions towards his majeſty. But upon what great affairs, conducing to the ends the army at firſt profreſſed, the time hath been hithertoſpent, and nothing done, but to get the whole power of the kingdom and city into their hand, is ſufficiently apparent.

"We therefore do in the preſence of Almighty God profeſs, That there is nothing in the world that we more deſire, than that his majeſty may be put and left free, in ſuch an honourable condition and capacity, as his perſon may appear to be at liberty, to receive and treat upon ſuch propoſitions as ſhall be preſented unto him from the parliaments of both his kingdoms; for our conſciences tell us, that whiſt his royal perſon is environed by an army, and remains under the power thereof, we cannot expect that either his majeſty's princely heart can give that free aſſent unto thoſe things which ſhall be propounded unto him as is requiſite; or if he do, cannot hope with good reaſon that we and our poſterity ſhall without alteration enjoy the ſame; and therefore we are reſolved earneſtly, yet with humility, to apply ourſelves to the parliament to this purpoſe, and hope that all good ſubjects, who are touched with any due ſenſe of that duty and allegiance which by the law of God and man they owe unto their king, will unanimouſly join with us therein.

"We cannot omit alſo to declare unto the kingdom, how we have ſadly obſerved, ſince the Eleven accuſed Members withdrew themſelves, and that the Army hath daily grown upon the parliament, that a very great and conſiderable number of other members of the houſe of commons have alſo retired themſelves, to the endangering of the kingdom, which never more needed a full council. And there-

fore we ſhall make our ſpeedy Addreſs to the honourable Houſe of Commons to call in the members of their houſe, reſiding in the Army, or retiring to their dwellings by leave of the houſe, or otherwiſe: And we ſhall particularly inſiſt upon the re-admiſſion of the Eleven Members, lately driven out of the Houſe of Commons by the violent purſuit of the Army, contrary to the ſenſe of the ſame houſe, the law of the land, and the privileges of parliament; wherein alſo we are confident, all good Engliſhmen, and lovers of their country, will adhere to them and us.

"We ſhould expreſs ourſelves further to vindicate this City before the kingdom, from the aſperſions which may have, throughout theſe diſtractions, been caſt upon this city to have been the firſt promoters and contrivers of this unnatural war, which God for the ſins of this nation hath brought upon the kingdom: But that God is our witneſs, how deſirous we have been at all times, and ſtill are, of a ſafe and well-grounded peace; and with what fellow-feeling we have looked upon the miſeries, which this long war hath brought upon our fellow-ſubjects throughout the country.

"And thus, as we have herein truly and clearly ſtated the matter of difference, if it can be called any, between us and the Army, to wit this alone, that we could not ſubmit the Militia of this City to be altered at the pleaſure of an Army, after it had been ſo orderly ſettled in the hands of ſuch as were truſted therewith for one whole year, when there was a full and free Parliament; ſo we find it more than time, that the whole kingdom were poſſeſſed with the true ſtate thereof; And therefore, and to this end, we have been neceſſitated to this Declaration, whereby we are confident, the whole kingdom will clearly diſcover, upon whom the guilt of a New War, which we do ſtill and will ever abhor, muſt juſtly lie: So, and no otherwiſe, ſhall we expect a bleſſing from Almighty God, in our juſt Defence (if we muſt be put upon the ſame) than as from the bottom of our hearts we ſincerely deſire an happy and ſpeedy Peace, by the Settlement of true Religion in this kingdom, by re-eſtabliſhing his majeſty's juſt Rights and Authority, by upholding all lawful privileges of a free Parliament, by maintaining the Fundamental Laws of the land, by reſtoring and ſecuring the ſubject unto, and in his juſt right and property, and by freeing this long oppreſſed kingdom of all Taxes and the enforced Free-Quarters towards the maintenance of an Army, which of a long time hath had no viſible enemy to encounter: And from this reſolution by the bleſſing of God, we ſhall never recede for any earthly conſideration or advantage whatſoever.

MITCHEL.

For the right honourable the Commiſſioners of Parliament reſiding with the Army.

"My lords and gentlemen; Having reſolved upon this enclosed Diſpatch to the City of London, I thought it my part to give you an

account of it, and to give you all assurance, that my heart is deeply afflicted with the late carriage towards the parliament: And however others have neglected their duty towards them for their security and defence; yet as God shall enable me, it shall be my great business to improve all that is in my hand for the preserving of them, and in them the interest of the nation, and what constructions soever some formerly may have put upon the proceedings of this Army: I trust the Lord will by his good hand lead us into such good actions, as shall witness our end answerable to all our profession; to wit, for the good of the kingdom, and therein to be an effectual saving to the great authority of the kingdom in the parliament. Your most assured friend. THOMAS FAIRFAX." Bedford, July 29, 1647.

A Letter from both Houses of Parliament to his Excellency Sir Thomas Fairfax, concerning the City of London, and other things relating to the peace of the kingdom.

"May it please your Excellency; The Houses having this day received from their Commissioners a copy of your Letter to them dated at Bedford, July 29, with a copy of another Letter of the same date, writ to the city of London, in both which though there be no accounts at all of the motion of your Army, yet the houses understand by the letters from their commissioners in which the copies were enclosed, and otherwise, that you have given Orders for the marching of the Army towards London upon pretence of defending the houses from the danger of Tumults; upon consideration whereof the houses have commanded us to let you understand, that as they cannot but have a deep sense of the undue liberty, which some Apprentices of the city of London, and others, from whom they might have expected more obedience, have taken to themselves to violate the just authority, privileges, and freedom of parliament, in which the safety of the whole kingdom is concerned, and so they doubt not but the sense of so great an offence will at last strike all their breasts that have been accessory thereunto, with a detestation of any practices of the like nature for the future: And as the houses cannot imagine, that the disorder committed by some Apprentices, or those that mingled with them, had the allowance of the City of London, so they have since received full satisfaction by the strict Orders given out by the Lord Mayor and Common Council of the city, to all masters to have care of their servants, and by their Declaration proclaimed in the several parts of the city, for the preventing and suppressing of tumults, that they shall sit with much freedom and security from any disturbance for the future. And therefore the Houses seeing no cause to command that Army, or any part thereof, to march up for their defence, but rather judging (by the distractions raised at the news thereof) that the motion of the Army near the City, is like to precipitate the City and Army in a desperate

and bloody engagement, not only to the disturbance of the parliament's sitting, but also to the destruction thereof, and of all authority, by casting the whole kingdom into confusion. For prevention thereof, they have sent you this enclosed Order, requiring you, as you tender the freedom of parliament, the safety of the city and whole kingdom, to give exact obedience thereunto, This being all we have in command, we rest." Westminster, July 30, 1647.

A Declaration of the Lords and Commons of the Committee for the Safety and the Militia of London, to the whole kingdom, of the Resolutions of the Parliament and City. Dated August 2, 1647.

"For the better satisfaction of the kingdom, the City of London (who have been the principal maintainers of the Army now advancing against them), is for peace, and hath omitted nothing to shew their desires to maintain a good understanding with the Army; what the city doth in standing upon their guard, is for their own defence, and not to engage in a new war, but to put a speedy period to the kingdom's troubles, and hasten Ireland's relief: They profess they have, and shall always endeavour to procure the soldiers indemnity, and that they may have their arrears paid them; and have no other end but that God may have his glory, the king's majesty settled in his just rights, the parliament enjoy their privileges and freedoms, and the subject their fundamental laws, liberty and peace: and this being the Resolution of this City, they are confident no person of honour, good conscience, and lover of their country, will draw sword, or use violence against them, but rather stand for their defence and safety."

Ordered by the Committee of Lords and Commons, for the safety of the king, parliament, city and kingdom; and also by the Committee of the Militia of the city of London and parts adjacent, that this Declaration be printed and published. Tuo. PARTINGTON, Clerk.

Upon August 3, the Lord Mayor, Aldermen, and Common Council of the City of London, having agreed upon a Letter to send to the General, six Aldermen and twelve of the Common Council went with the same early this morning, and presented it to the General at Colebrook: The Letter was as followeth:

A Letter agreed upon by the Lord Mayor, Aldermen, and Common-Councilmen of the City of London, to be sent to the General at Colebrook, August 2, 1647.

"Right Honourable; Unto all our present unhappiness we have this added; That we have not yet received any Answer from your Excellency to our two last Letters, although the Army be approached so near unto us, and that some of our Committee have daily attended to that purpose: but we are resolved to omit nothing unattempted, though all discouragements do manifest, as we have always profest, how much we desire peace and abhor a new War; and

to this end we have added six Aldermen and twelve Commons to the Committee we formerly appointed to attend your Excellency; from whom your Excellency will please to receive our sense of the great offence that the Army hath taken against this city, and give ear and credit unto those things which they delivered unto your Excellency and your honourable council of war on our behalf: We have no more to say, but to pursue them with our prayers, that God will give a blessing to their and our endeavours; and avert his heavy judgments from this city, and incline your noble heart to weigh seriously the miseries of a new War; wherein whatsoever share is allotted to this city, the desolation will have an influence upon the whole kingdom.—By the command of the Lord Mayor, Aldermen, and Commons of the City of London. MICHELL."

Upon the presenting of this Letter, the Commissioners for this City had presented them a Declaration by the General and Council of War on behalf of themselves and the whole Army, dated at Colebrook, August 3, 1647, shewing the Grounds of their present advance towards London: They likewise presented them a Copy of the Grand Proposals of the Army for a settled Peace, and a short Declaration thereunto added; and these they received as the Grand Desires and Proposals of the Army, and Declaration of their Proceedings and Intentions. This is given at large at 3 Cobb. Parl. Hist. 746. It assigns the pretensions and proceedings of the Citizens of London, and the apprentices, as the principal cause of the Army's advance.

Wednesday, August the 4th, another Letter was presented to the General at Thistleworth, from the Lord Mayor, Aldermen, &c. of London, in these words:

"Right Honourable; We have by some of that Committee, which we sent down unto your Excellency this morning, received the Declaration of your Excellency, and your Council of War, on the behalf of yourselves, and the whole army, as we were sitting in council, about five of the clock in the afternoon, and have heard the same read, and considered seriously thereupon; and by our Committee we have had a full Relation of all Passages between your Excellency and them; and forasmuch as we observe from the said Declaration, of the chief cause that hath drawn your Excellency and your army thus near the city, is to bring home those noble and honourable members of both houses; who, because of the Tumults at Westminster the 26th past, have retired themselves, to the end they may be placed in safety, and in Free Parliament at Westminster, We cheerfully and heartily join with your excellency therein; and according as we shall find directions from your Excellency, they shall find all ports and passes open to receive you and them, as also such guards of two or three regiments as your Excellency shall think fitting, for their conduct to the two houses of parliament; and

the parliament being sate with peace and safety, we shall humbly submit to their direction, what forces of yours and ours to continue for their future guard; in which service, we humbly offer the whole strength of this city; all other matters which in this streight of time we cannot go through, we wholly refer and submit to be determined by both houses, when they shall be set in safety at Westminster, as aforesaid, and in confidence that God will give a blessing to these our endeavours, for the taking away all offences and misunderstanding, we have recalled our late Declaration, published in the name of the Lord Mayor, Aldermen, and Commons of the city of London, in common council assembled: And now we well hope, That your Excellency will receive such satisfaction hereby, as that you will withhold the soldier from doing any offence or prejudice to the City, or lines of communication.—By command of the Lord Mayor, Aldermen, and commons at London, in common-council assembled. MICHELL."

London, Aug. 3, 1647.

This morning also about two of the clock, col. Rainsborough, col. Hewson, col. Pride, and col. Rossiter's regiment, commanded then by lieutenant-colonel Twisleton, with their several regiments of horse and foot, which is the brigade commanded out on Hounslow-Heath, marched into the borough of Southwark, without any opposition, the soldiers carrying themselves very civilly, without doing hurt to any; and finding the city gate on the bridge shut, and the Port-cullis let down, as also a guard within; they planted two pieces of ordnance against the gate, and set a guard without, and in a short time after the great fort was yielded to them.—About two of the clock this afternoon the Six Aldermen, and Twelve Commons before-mentioned, returned from his Excellency to the Common-Council at Guild-Hall, with the General's demands, to have the forts on the west side of the City of London to be delivered up to him; and that security being given, he would bring the Members of both houses, who were forced from the Parliament, to Westminster, to sit in the Free Parliament; and of this an Answer was to be returned to the General by six of the clock at night: And after a full debate thereupon a Letter was drawn up and sent to his Excellency in these words:

"Right Honourable; By those of our Committee which came from you this day, we understand your Excellency's and your honourable Council of War, their expectation to be possessed of all forts from Giles's fort, and that to be one, down to the river-side, by six of the clock this evening: And we took notice for what reasons your Excellency is led to insist thereupon: For our parts, that we may manifest how ready we are to comply with all things which may beget a good understanding, We have readily consented thereunto, as far as the cognizance thereof belongs to this court, and

have given directions accordingly, to the Committee of the Militia, for drawing off all forces and ordnance, unto which work they do now instantly apply themselves, and we are confident your Excellency will find performance accordingly. The Committee of the Militia will also give order for quitting such forts on Southwark-side, as are not as yet in possession of your forces. And now, next under Almighty God, we do rely upon your Excellency's honourable word for our safety, and to be protected from all violence of the soldiery. MICHEL."

August 4, 1647.

Aug. 5th. The whole Army advanced nearer London, the general removing his head quarters from Thistledown, came to Hammersmith, and at the end of the town was met by the commissioners of the city, who assured him, that the city were well satisfied upon the agreement of his excellency's advance, that the forts from Giles's to the water-side were acquitted by them, and delivered to the forces sent by his excellency, who now had the guard of them; and they desired of his excellency an Answer to their last Letter, whereupon his excellency returned back to sir Nicholas Crisp's house, where a letter was agreed on as followeth:

"My lords and gentlemen; I am very glad to find so ready a compliance, in answer to my last Desire sent to the Common Council, and have accordingly given order for three regiments of foot, and two of horse, to possess those forts you mention in your last, and to lie thereabouts. I am with the rest of the Army marched up to Hammersmith, in order to the security of the lords and commons, who, I suppose, will to-morrow sit in parliament: the preserving of their privileges, and securing them from violence, that with freedom they may sit and discharge their trusts, hath been the cause of my near approach to your city; and whereas you are pleased to express your hopes of preservation from violence, you may be confident nothing shall pass from this army, but what shall be for the safety of this city: and I doubt not, though some disaffected persons to the peace of the kingdom, have endeavoured to beget a misunderstanding between this army and the city, hoping thereby to embroil the kingdom in new troubles, yet that this army will always so behave themselves, as to witness to the world the integrity of their hearts, in having no other design, but the quiet and happy settlement of a firm and lasting peace, wherein both the whole kingdom, and your city particularly, will have cause to rejoice in the goodness of God, the accomplishment whereof will truly glad the hearts of this army, and in particular of, Your most humble servant,

THO. FAIRFAX."

Aug. 6th. His excellency sir Thomas Fairfax came to take possession of the Tower of London, according to the Votes of both houses on Friday last; he was attended on by his life-guard and a party of colonel Pride's regiment of foot: coming to the Tower, the city-guard

that were there, marched out, and about 300 of the general's foot marched in, when also his excellency went into the Tower, attended by many commanders and other gentlemen, and took possession of his command there as constable.

The Lord Mayor, Aldermen, and Common-council of London had appointed a Committee to congratulate his Excellency at the Tower, which Committee coming to the Tower, after dinner alderman Gibbs made a speech to his excellency, thereby intimating that the Lord Mayor, Aldermen and Common-council of the City had commanded him to give his Excellency and his army thanks for their love to and care of the city of London; and that they could wish they were able to record his praises to future ages suitable to their worth:—That they are very sorry that their coming into the City was so sudden, that they could not attend his excellency in such an equipage as they desired: and lastly, that he was desired to recommend to his excellency the faithfulness and care of colonel West lieutenant of the Tower; and that they do desire his excellency, That on Thursday next, if it may suit with the great affairs of the kingdom, the city do desire that his excellency with his general officers, and captains, would please to dine with them; and that all names and distinctions of parties in the city and kingdom may be laid aside, and every one seek peace and unity, that the army may strengthen the hands of the city, and the city the army, by a firm bond of unity.

To which his Excellency returned a loving and modest Answer, giving them thanks for the expressions of their love to him, and care of the peace of the kingdom; that for a lieutenant of the Tower, (though he that was now in, was a worthy person) he had appointed a gentleman of known worth and fidelity, a citizen of good estate, dwelling amongst them, viz. Colonel Tichburne, who is by his excellency made lieutenant of the Tower; that for him and his officers coming to dine with the city, he would acquaint them with their desires at a council of war, giving them thanks, and desiring that all may labour and study for unity and peace: after this his excellency went to view what store of ordinance, arms, powder, shot, musket, pistols, and other ammunition was in the Tower, attended by both the lieutenants, officers of the ordinance, and many other gentlemen of quality; and after view taken of the stores, he went up into the White Tower, and stayed above half an hour, taking a view thereof, and then came down and gave order to his lieutenant to give away 20*l.* to be divided as he shall think fit, among the warders, clerks, &c. belonging to the officers of the ordinance for their pains; so his excellency departed, and went that night from London to the lord Pawlet's house by Turnham-Green, whose son sir John Pawlet married the general's lady's sister, and stayed there this night and Tuesday.

September 24. According to former order, the Committee appointed to examine the Force

upon the House of Commons, made their further report, and it was concerning the proofs and informations against some of chief eminency in the City that had been actors or abettors of the Force and Tumults against the houses. Upon which the house entering into serious debate, it was put to the question, and voted, "That there appears sufficient matter to accuse sir John Gayre knight, mayor of the city of London, of High-Treason;" and further voted, "That he should be committed prisoner to the Tower of London upon accusation of High-Treason, for countenancing and abetting the Force and Tumults brought down and used against the house the 26th of July last; and this to be in order to his trial."

The House upon debate also further voted the like Charge of High Treason against Thomas Cullam alderman and one of the sheriffs of London, James Bunce alderman, John Langham alderman, Thomas Adams alderman, citizens of London, for countenancing and abetting the said Force against the Houses; and that they be committed to the Tower of London\*.

And the Committee appointed to examine the said Force and Tumult, were appointed to prepare and bring Impeachments against the said Lord Mayor and Aldermen as aforesaid, against Monday morning next.

September 25. The Lord Mayor and impeached Aldermen before-mentioned being taken into custody the last night, were this day

\* Whitelocke speaking of the disturbances made by the Citizens, thus moralizes: "We may take notice of the uncertainty of worldly affairs, when the parliament and their army had subdued their common enemy, then they quarrelled among themselves, the army against the parliament; when they were pretty well pieced together again, then the apprentices and others make an insurrection against the parliament and army. Thus they were in continual perplexities and danger."—In a like strain he observes on another occasion: "In these passages we may take notice of the strange workings of God, and of the perplexed condition in which the parliament was at this time." The Invasion of England by Hamilton and the Scots calls forth these reflections: "Here you may take notice of a strange turn in the affairs of this Parliament to which all human affairs are subject, but in these times much more than ordinary. You have read the great endeavours formerly, to bring them in as friends to assist the Parliament, and remember the story of their actions, and return home again; now the other faction in Scotland prevailing, the Scots are turned enemies to England, and invade them with a considerable army; before, they joined with the parliament against the king, now they join with the king's forces against the parliament. How like the Sea the People of the world are, still ebbing or flowing, always in an uncertain motion, and constant in nothing but inconstancy!"

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carried to the Tower, according to the Votes of the Houses.

This day a further Report was made to the House from the Committee appointed to examine the Force upon the house and Tumult in relation to citizens; and it was voted, "That col. Lawrence Bromfield, col. Edward Hooker, captain Jones, be impeached of High Crimes and Misdemeanors, and committed to the Sergeant's custody attending the house of commons; and that a Charge of Impeachment be drawn up against them accordingly." Also, "That captain Musgrave, Tho. Carill, Barthol. West, Rich. Rumney, Ralph Hooker, John Melton minister, James Studley, Richard Fortis, Mr. William Drake, —Brooke, Apprentice to Mr. Baker of Hellens, John Harley, Daniel Hill, and Edm. Peisley citizens of London, be indicted of High-Treason at the King's Bench bar, and committed to the Sergeant's custody until their trial this next term at the court of King's Bench aforesaid."

The House had then also debate in relation to the settlement of the government of the City of London; and ordered, That the Aldermen and Common Council of London do meet and consider how the civil government of the city may be executed according to the city charter, now that the Lord Mayor is committed.\*

September 24. The Commons sent by Message to the house of peers an Impeachment against the Lord Mayor of London according to the Votes the last week, desiring their lordships would appoint a time for his trial; and the Commons will be ready to bring up their Charge and Proof against him.

Both the Houses passed an Order for a Common Hall to be called to-morrow at Guildhall, London, for the chusing of a new Lord Mayor, according to the custom of the city of London.

September 25. This day was a Common Hall in London for the chusing of a Lord Mayor. There was in nomination alderman Warner, alderman Andrews, sir Jacob Garret, sir Thomas Soames, and alderman Reynoldson; and after it was put to the voice, it was in competition between the three first. The aldermen would have two presented to the Commons, whereof they to chuse one, according to late custom: But the City Charter being read in that particular, it appeared, that the Commons came to chuse (and not to present) a mayor for the year ensuing; and they chose alderman Warner both for the next year

\* On the 28th of March, 1771, Brass Crosby, Lord Mayor of London, a Member of Parliament, was committed to the Tower under a warrant of the Speaker of the House of Commons, for a breach of privilege of the house; (see the Case, *infra*). He remained in confinement till the end of the session, during which period, it appears that alderman Trecothick officiated as his *locum tenens*; under what devolution of authority is not set forth.

ensuing, and in the room of sir John Gayre, for the remaining part of this time.

September 29. Alderman Warner, the new Lord Mayor, was presented to the House of Peers to take his oath to serve out the time of sir John Gayre; and is afterwards to be again sworn for the year following. At his presenting before the Lords, one of the City Council made a Speech, acquainting their lordships, That according to the Charter of the city of London, they had chosen alderman Warner to be Lord Mayor for the year following, he being a gentleman of approved worth and fidelity to the city and kingdom; using many expressions in his commendations; and in truth he well deserves them, desiring their lordships approbation of their choice, and that he may execute the place for the time of sir John Gayre, and year following, and that he may be sworn; which their lordships accordingly gave order for, expressing their very good liking and approbation in the choice of the said Lord Mayor; of whose fidelity and abilities, as well parliament as city, have received so many testimonies.

December 3. After the City Petition was read, and Answer given thereunto, they Ordered, That the Committee appointed to draw up the Impeachment against the Lords, do draw up the Impeachment against the late Lord Mayor, Aldermen, and Recorder of London, now in the Tower, by Monday morning next.

March 13, 1648. This day, according to former Order, the house took into consideration the several Impeachments of High Treason against sir John Gayre, knight, alderman, and late Lord Mayor of the city of London, alderman Bunce, alderman Adams, and alderman Langham. In the first place the Impeachment against sir John Gayre was read, and the Proofs to every Article against him; upon which the house being fully satisfied to the matter against him, they voted and past every of the said Articles one by one. The Articles of High Treason against alderman Adams were also read particularly one by one, and the particular Proofs to each Article, and were assented unto. The like Articles against alderman Bunce and alderman Langham were past. The house then ordered, That the several Articles of Impeachment should be sent to the Lords, and their lordships to be acquainted that the House is ready to make good the Charge against the said several aldermen.

March 21. A Message was brought from the Commons by Mr. Chaloner and others, with Articles of Impeachment for High Treason, and other High Crimes and Misdemeanors, against sir John Gayre knight, alderman of London, James Bunce, Thomas Adams, and John Langham, aldermen of the same: who, in the name of the commons, and of all the commons of England, did desire their lordships to put the said aldermen to their Answer; and that such proceedings might be had thereupon as were agreeable to justice: that the house of commons were ready with their Evidence, and that the four impeached Aldermen were by

virtue of an order from their house, committed prisoners to the Tower.

April 14. The Commons sent up to the Lords their Articles of Impeachment against sir John Gayre, knight, which were read, as follows:

**ARTICLES** of the Commons assembled in Parliament, in Maintenance of their Impeachment against Sir JOHN GAYRE, Knight, Alderman of the City of London, whereby he stands charged of High Treason, and other High Crimes and Misdemeanors.

“That upon the 26th of July last past, and divers days before and since, he the said sir John Gayre, being then lord mayor of London, at the Guildhall, and other places within the said cities of London and Westminster and counties of Middlesex and Surry, contrary to his oath and duty as lord mayor of London, and against his allegiance, hath, together with Thomas Adams, John Langham, and James Bunce, aldermen of London; Wm. Drake, Jeremiah Bains, John Milton, Thos. Pappillon, Richard Rumney, and Richard Crook, citizens of London; and with col. Sydenham Pointz, col. John Dalbier, col. James Midhop, capt. Robert Massey, and other Reformado officers and soldiers, and other persons, maliciously and traitorously plouted and endeavoured, with open force and violence, and with armed power, to compel and enforce the lords and commons, then assembled in parliament at Westminster, to alter the laws and ordinances by parliament established for the safety and weal of the realm; and likewise, maliciously and traitorously, to raise and levy war within the places aforesaid, against the king, parliament, and kingdom; and accordingly at the times and places aforesaid, hath, with the persons aforesaid, and others, maliciously and traitorously raised and levied war against the king, parliament, and kingdom; and together with the persons aforesaid, with open force and violence, and with armed power, did, at the times and places aforesaid, maliciously compel and enforce the said lords and commons, in parliament assembled, to alter, annul, and make void several laws and ordinances by parliament established, and to make new laws and ordinances according to their own will and pleasure.

“That the said sir John Gayre, together with the said John Langham, &c. and other reformado officers and soldiers, and other persons; which reformadoes, by ordinance of parliament, the lords and commons assembled in parliament, for their tumultuous carriage towards the parliament, were commanded to depart out of the cities of London and Westminster, and twenty miles about the late lines of communication; and the execution of the said ordinance was committed to the said sir John Gayre, &c. the then militia of the city of London, who were, by divers orders of the house of commons, put in mind of their duty, and required to put the said ordinance duly in execution, which they did not do; but did, at the

times and places aforesaid, traitorously and seditiously procure, abet, maintain, and encourage the said reformed officers and soldiers, and many apprentices of the city of London, and divers other persons ill affected to the proceedings of parliament, by open force and violence, and with armed power, to compel and enforce the houses of parliament to revoke, annul, and make void an ordinance of parliament, made and passed by the lords and commons, now assembled in parliament, the 23d day of July last. And likewise, by such open force and violence, and armed power, to compel and enforce the said lords and commons, assembled in parliament, to revoke, annul, and make void a declaration, made by the said lords and commons, the 24th of July last. And further, by the said open force and violence, and with armed power, to compel and enforce the said lords and commons in parliament assembled, to make and ordain an ordinance of parliament of the 26th of July, whereby they made the ordinance of parliament of the 4th of May, for and concerning the militia of the city of London, formerly repealed, to be in full force and virtue, any thing in the ordinance of the 23d of July to the contrary notwithstanding.

“And the said col. James Mithop, capt. Robert Massey, and the said other reformed officers and soldiers, apprentices, and others the said ill-affected people, by the procurement, abetting, maintenance, encouragement, and assistance of the said sir John Gayre, &c. did accordingly, traitorously and maliciously, with open force and violence, and with armed power, upon or about the 26th of July, compel and enforce the said lords and commons, in parliament assembled within the city of Westminster, to repeal and make void the aforesaid ordinance of the 23d of July; and also revoke, annul, and make void the aforesaid declaration of the 24th of July; and to make again and pass the said ordinance for the militia, of the 4th of May, formerly repealed.

“And by the said open force and violence, and armed power, and by the procurement, abetting, maintenance, encouraging, and assistance as aforesaid, did, on or about the 26th of July, traitorously and maliciously compel and enforce the house of commons to vote, That the king should forthwith come up to the city of London; which procuring, abetting, maintaining, encouraging, and actual force as aforesaid, was procured and done to the intent and purpose to annul and make void several laws and ordinances made by the lords and commons assembled in parliament for the safety and welfare of the people of this realm, and to destroy and take away the just power and authority of the parliament; and to the further intent, that he the said sir John Gayre, with others his said confederates, might be the better enabled to carry on their traitorous design of levying the said war against the king, parliament, and kingdom.—That, in further prosecution of his said traitorous levying the said war, and other his traitorous plottings, con-

trivances, and abetting as aforesaid, he the said sir John Gayre, &c. and other persons, caused many of the reformed officers and soldiers, and many regiments of other armed men, to the number of 10,000 armed men, and upwards, upon or about the 30th of July last past, to be listed and raised; and being so listed, armed, and raised, to be employed with weapons of war, offensive and defensive, in a warlike manner, to fight against the army under the command of sir Thos. Fairfax, who was, by ordinance of lords and commons, assembled in parliament, appointed to defend the parliament and kingdom, and was then marching up to the city of London, to that purpose; and the said sir John Gayre, and the said reformed officers and soldiers, and persons aforesaid, with the said regiment of armed men and other forces, at the time aforesaid, did levy actual war within the cities of London and Westminster, counties of Middlesex and Surry, against the king, parliament, and kingdom.—By all which means and ways, he the said sir John Gayre hath, traitorously and maliciously, conspired, continued and actually levied war against the king, parliament, and kingdom, and hath traitorously and maliciously plotted, contrived, procured, and abetted the forcing of the said houses of parliament as aforesaid, which actually by him, and his abetment and procurement, hath been done accordingly: for all which they do impeach him of High Treason against the king, his crown and dignity.—And the said commons, by protestation, saving to themselves a liberty of exhibiting, at any times hereafter, any other accusation or impeachment against the said sir John Gayre; and also of replying to the answers that the said sir John shall make to his said articles, or any of them, and of offering further proof also of the premises, or any of them, or any other impeachment or accusation that shall be by them, as the cause shall, according to the course of parliament, require, do pray that the said sir John be put to answer all and every the premises; and that such proceedings, examinations, trial, and judgment may be upon every of them had and used, as is agreeable to law and justice.”

Hereupon the lords ordered, That sir John Gayre, now prisoner in the Tower, be brought to their bar on Wednesday next to receive this Charge brought up from the house of commons against him.

April 19. The Lieutenant of the Tower having brought up sir John Gayre to the house of lords, the Speaker commanded him to kneel at the bar as a delinquent; which he refused to do, and desired to be heard: but being commanded again to kneel, and he still refusing to do so, the lords directed him to withdraw; and then taking into consideration the high Contempt hereby offered to their house, fined him 500*l.* to the king, to be presently estreated into the exchequer.—Sir John being called in again, and told by the Speaker, That the lords had fined him 500*l.* for his high Contempt; and the Impeachment being then read

in his presence, he said, He disavowed and abhorred the offences which he had heard read to him: he also desired a copy of his charge, time to answer it, and that such council as he should desire might be assigned him; which the lords agreed to.

April 12. The Articles of Impeachment brought up from the commons against Thomas Adams, alderman of the city of London, were read: but, being the same as those against sir John Gayre, it is unnecessary to repeat them.

April 26. Alderman Adams was brought to the bar of the Lords, to receive his Charge of High Treason, and other High Crimes and misdemeanors brought up from the Commons against him; where, being commanded to kneel as a delinquent, he desired to be excused from kneeling; which answer the lords took for a contempt; and, after commanding him to withdraw, fined him 500*l*. to be estreated into the exchequer, and levied forthwith.—Then he was called in again, and the Speaker told him, That their lordships had fined him 500*l*. for his high contempt to that house, in refusing to kneel at their bar; and then commanded his Charge to be publicly read to him, which was accordingly done. Next the Speaker told him he should have a copy of his Charge, if he desired it, and counsel assigned him; which was accordingly ordered.

Next, John Langham and James Bunce, aldermen, were called in separately, and both set to the bar and commanded to kneel; which they also refusing, were each fined 500*l*. for their contempt, and were remanded back to the Tower. The fines were ordered to be estreated forthwith, and copies of the writs for that purpose are entered in the Journals.

May 23. The Lord Mayor, Aldermen and Commons, of the City of London in Common Council assembled, presented a Petition to the House of Commons, praying, amongst other things, "That the Aldermen now in the Tower, the Recorder, and the rest of their fellow-citizens restrained upon the same occasion, may be discharged and restored; whereby the City may be the better united, their hands strengthened, and they made more serviceable to the Parlia-

ment and City for their preservation and safety, which they shall endeavour to the utmost of their power and abilities."

The Lords returned the Petitioners Thanks; That upon the Impeachments sent from the Commons, they had proceeded no otherwise than in the usual course of parliament: That as to the Recorder and the rest not impeached, they would endeavour their release; and assured the City of their inclinations to comply with these desires from them, as a means firmly to unite them, to fasten their hearts, and strengthen their hands to serve the parliament, in order to the establishment of religion and the peace of the kingdom according to the Covenant.

The Speaker of the house of commons acquainted the citizens, That the house had considered their Petition; that in it were many Desires which are expressed to tend very much to the union of the city in itself: which how much that house desired, would appear by the following Vote: 1. "That Mr. Glynn, Recorder of the City, be discharged from any proceedings upon the Vote for his Impeachment. 2. The like order made for lieut. col. Baines; the colonels Chapman, Vaughan, Copely, Bromfield, and Hooker; the captains Jones and Cox. And, 3. That upon the desire of the Militia of London, the horse and foot in the Tower should be removed from thence, and joined with the forces at Whitehall and the Mews; there to continue till the city declare they are in a posture to defend the parliament and themselves."—He also further informed them, That as to the Case of the Aldermen in the Tower, it was a business of a very serious and important consideration; and therefore the house had resolved to resume the debate of it on that day se'nnight.

June 3. The House of Commons resolved, "That the Votes whereby Alderman Gayre, Langham and Bunce stand accused, be hereby discharged."

June 6. The Lords concurred with the Commons, and resolved not to proceed any farther against the Aldermen in the Tower, and ordered them all to be discharged.

181. Proceedings against the Seven Lords; namely, JAMES Earl of SUFFOLK, FRANCIS Lord WILLOUGHBY of Parham, JOHN Lord HUNSDEN, WILLIAM Lord MAYNARD, THEOBALD Earl of LINCOLN, GEORGE Lord BERKLEY, and JAMES Earl of MIDDLESEX, upon an Impeachment of High Treason, for levying War against the King, Parliament, and Kingdom: 23 CAR. I. A. D. 1647. [7 Rushworth. 3 Cobb. Parl. Hist.]

THE Commons this 8th day of September 1647 further proceeded in the Report from the Committee, how far any member of parliament had been active in the late design of a new War, and Tumults in London; and they had before them the cases of several lords, members

of the house of peers, and upon debate of the Informations, and Proofs against them, the commons voted an Impeachment of High-Treason against them, viz. against James earl of Suffolk, Francis lord Willoughby of Parham, John lord Hunsdon, William lord Maynard,

Theobald earl of Lincoln, George lord Berkley, and James earl of Middlesex, for levying of war against the king, parliament, and kingdom.

And the commons sent a message to the house of peers, to impeach the said Lords of high-treason at the bar of that house; and to desire their lordships that they may be sequestered from the service of the house, and committed to custody: and that the commons would be ready when their lordships should please to bring a particular charge against them, which was done accordingly.

Their lordships taking into debate the said Charge, appointed to meet in full house about the same to-morrow; and that the said impeached lords should have notice to attend, which was also done accordingly.

Sept. 9. The house of peers this day, as was ordered, debated the business and Impeachment of their members in a full house; and it was voted and ordered, That the gentleman-usher of their house seize and bring before their lordships the said earl of Lincoln, earl of Suffolk, and earl of Middlesex, the lord Hunsdon, lord Willoughby of Parham, lord Berkley, and lord Maynard, to answer the impeachment of high-treason brought up against them by the house of commons.

Sept. 16. They likewise ordered to send a message to the lords, that they would appoint a day for the commons to bring up a Charge, in order to the former Impeachment against the seven impeached members of that house, of which seven the earl of Lincoln, earl of Suffolk, and lord Maynard only are in custody of the black-rod, lord Hunsdon sick, and no return, as we yet hear of from the earl of Middlesex, lord Berkley, and lord Willoughby of Parham.

The Impeachment of the house of commons against the Seven Lords had laid dormant in that house, and no farther notice is taken of it in their Journals, than what is before given; till October 14, on which day we find that a message from the commons was sent up, declaring, "That having long since brought up an Impeachment of high-treason, against James earl of Suffolk, Theophilus earl of Lincoln, James earl of Middlesex, George lord Berkely, Francis lord Willoughby, John lord Hunsdon, and William lord Maynard, they desire their lordships would please to appoint a time when the house of commons should bring up their proofs against them." The answer was, that the lords appoint that day fortnight for the purpose.

December 2. The house of commons ordered, That the Impeachment against the earl of Lincoln should be read, which accordingly was read the first time.—A Message was ordered to be sent to the lords, to desire their lordships that the house may have further time given them to bring up their Impeachment against the Seven Lords impeached by that house.—They also ordered, That a member of the house should prepare and make ready

the Proofs and Evidences against the said lords, by Saturday next.

A Message came from the lords to acquaint the house, That their lordships, according to the desire of the house, had ordered by this day seven-night, for the House of Commons to bring up their Charge against the Members of that house impeached.

December 9. The house, according to former order, took into debate the several articles of Impeachment against the Seven Lords formerly impeached by that house, and some of the proofs of the said Impeachment were read, which took up the rest of this day's debate: the further consideration of that business is to be resumed to-morrow.

December 10. The house ordered, that a message should be sent to the lords, for desiring their lordships to appoint a farther day for the house of commons to bring up the impeachment against the seven members of their house formerly impeached by them.

December 13. The Impeachment against the Seven Lords was this day read in the house of commons, and part of the proofs thereof.

Dec. 14. This being the day appointed for the Commons to bring up their Articles of Impeachment against the Seven Lords; and they not appearing to support their Charge, a committee of lords was appointed to consider of precedents in this case, and to offer somewhat to the house to prevent the like for the future.

Jan 19, 1648. A Letter directed to the Speaker, from the earl of Lincoln and the other lords under restraint, except the lord Hunsdon, was read:

"My lords; After so long a restraint, by your lordships order, and no prosecution against us, we may expect, from your justice, our liberties; the which we shall enjoy with the more satisfaction, as it will appear a right to your lordships quality, as well as a freedom to the present condition of Your, &c. Berkeley, Willoughby, Maynard, Lincoln, Suffolk, Middlesex. Jan. 19."

It was then ordered, That these Six Lords, that have subscribed this Letter, shall have their liberty from the restraint they lie under, in the custody of the gentleman-usher of the black rod attending that house; and it was referred to a committee to consider of some Declaration, to be entered in the Journal Book, concerning the commitment of peers of this realm upon Impeachments. The lord Hunsdon was also released the next day, on his application, by letter, to the house.

Jan. 28. The Commons sent up a Message to impeach Francis lord Willoughby of Parham, of High Treason and other high crimes and misdemeanors, and exhibited Articles of Impeachment at the same time against him.

Jan. 31. The Commons sent up to the Lords Articles of Impeachment against the earls of Lincoln and Suffolk, with the rest of the Seven Lords formerly impeached by them

of High Treason, for levying war against the king, parliament, and kingdom; and desired that such farther proceedings might be had thereupon as to justice and the course of parliament did appertain, and then the Commons would be ready with their Evidence to support the said Charge.

Feb. 2. The Lords took into consideration the Articles of Impeachment against the Seven Lords, of High Treason, and high crimes and misdemeanors, brought from the commons; and it was moved that it might be considered, Whether the releasing of the said Lords, and giving them their liberty on the 19th Jan. last, be not a discharging and acquitting them of the general accusation of High Treason; and whether the releasing of their persons be a discharging of that accusation? Then the General Accusation of the 8th Sept. last was read, and the Order for their commitment, with the several Messages sent to the House of Commons concerning them. And the question being put, Whether, upon what hath been now read, the general Impeachment against the Seven Lords is dismissed? It was resolved in the negative.—Next, it was taken into consideration, Whether, in the particular Articles against the Seven Lords, there be not a contrariety in the averment of the House of Commons; because the Articles make mention, That they are in maintenance of a former Charge brought up from the Commons against them, of High Treason, and high crimes and misdemeanors; and it was moved to have a conference with the Commons about it; and the question being put, Whether to send to the Seven Lords copies of their several and respective Articles, and appoint them a day to put in their Answers, to the same, before such time as a conference be had with the Commons concerning this business, it was resolved in the affirmative; and ordered, That the earls of Lincoln, Suffolk, and Middlesex, the lords Berkeley, Hunsdon, Willoughby, and Maynard, shall attend at the bar on Friday morning, and receive their several and respective Articles of Impeachment of High Treason and other high crimes and misdemeanors, brought from the Commons against them; and that they put in their several and respective Answers thereunto by to-morrow fortnight. And it was further ordered, That the aforesaid lords be sequestered from the house, upon this Charge: and that they shall put in bail of 4,000*l.* a-piece and 2,000*l.* by sureties for each lord, on Friday next.

Feb. 3. The Lords ordered, That the Seven Impeached Lords be allowed till Tuesday next for coming to receive their Charges and bringing in their Bail.

Feb. 8. This day Six of the Impeached Lords appeared at the house of peers' bar, where they heard their Charges read one by one; they then entered bond, and put in their security, according to their former order. The lord Willoughby came not, but sent a Letter, being himself withdrawn, which being read was to this effect; That he had been about four

months committed, without particular Charge against him, that their lordships were pleased to order his enlargement; that he had received counsel from a friend, that he is not fit for public employment, and therefore resolved to privacy, that he hath always been faithful to the parliament, and desired their lordships to make an honourable construction of his retirement.\* The lords ordered that 14 days be given to all the Seven Impeached Lords to put in their Answers; and they shall have council assigned to them, if they desire it, for matter of law,

March 8. A Petition was presented to the house of peers from the Impeached Lords, all but the lord Willoughby of Parham, desiring a further day to bring in their Answer, because the counsellors assigned them are some of them out of town, upon which the Lords granted them time until the 12th of April.

April 12. This day the earl of Lincoln, earl of Suffolk, earl of Middlesex, the lord Hunsdon, lord Berkley, did each of them put in their Answer to the house of peers in parchment, pleading not guilty to the Charge of High Treason framed against them.

April 18. A Message was sent up from the Commons to the Lords, to mind them of the Impeachment against the Seven Lords; which the Lords ordered to be taken into consideration on the 20th instant.

June 6. The Commons sent up a Message to acquaint the Lords, That they would proceed no farther upon the Impeachments against the Seven Peers. Upon which the Lords ordered, That the said Lords by name should be forthwith discharged from the restraint they laid under on account of the said Impeachments; and that the same, upon the aforesaid Declaration of the Commons, should be vacated in the Journal-Book. Ordered, also, That the Lords impeached should have notice to attend the service of the house the next morning.

\* "He was in the beginning of the troubles very hearty and strong for the Parliament, and manifested great personal courage, honour, and military, as well as civil, abilities; as appears by his actions, and letters, whilst he was in the service of the parliament. In whose favour and esteem he was so high, that they voted him to be General for the Horse, under the earl of Essex, and afterwards to be an earl. But having taken a disgust at the Parliament's declining a personal Treaty with the king, and being jealous that monarchy, and consequently degrees and titles of honour, were in danger to be wholly abolished, he was too forward in countenancing and assisting the late tumults in the City, when the Members of Parliament were driven away from Westminster to the Army. Upon the return of the Members he was with other Lords impeached of High Treason for that action; and rather than appear, and stand to a Trial for it, he left his country, and was now with the prince in his navy, for which the commons voted his estate to be secured." Whitelocke.

182. THE TRIAL OF CHARLES STUART, KING OF ENGLAND;  
Before the High Court of Justice, for High Treason :  
24 CHARLES I. A. D. 1649.\*

INTRODUCTION.

THE following brief Account of some Proceedings in Parliament will serve as an introduction to this important Trial :

January 3, 1648. The Commons resolved, That no further Addresses be made to the King by themselves, nor by any other, without leave of both houses, and those that do, to incur the penalty of High Treason. And declare, They will receive no more Messages from him. And enjoin, That no person whatsoever receive or bring any more Messages from him, to both or either houses, or to any other person.

Jan. 15. The Lords concurred to these Votes.

August 17. The Commons concur with the Lords, that these Votes for non-addresses be revoked.

November 20. The Army present their Remonstrance to the Parliament, for bringing Delinquents to Justice.

Nov. 24. The Treaty at the Isle of Wight voted to continue till the 27th of November.

December 1. Master Hollis presents an Account of the Treaty with the King. And the same day information was brought them of the King's being removed from Carisbrook to Hurst Castle.

Dec. 5. The king's Answer to the Propositions voted a Ground for the House to proceed upon, for Settlement of the Peace of the Kingdom.†

\* In the original all the Proceedings in this Case are stated to occur in 1648, agreeably to the old computation of the commencement of the year from March 25th. But here the year is computed to begin on January the 1st, and the dates are altered accordingly. Similar alterations are made generally throughout this work.

† Upon this question Prynne made his celebrated Speech, maintaining the sufficiency of His Majesty's Answer, as a Ground, &c. See 3 Cobb. Parl. Hist. 1152. To find that the most strenuous and the most powerful efforts in his favour upon this most critical occasion had been made by Prynne, whom he had suffered his ministers in the Star Chamber to punish so barbarously [See the Cases A. D. 1633, 1637, vol. 3, pp. 562, 711.] must have been a shock to the feelings of Charles, nearly as severe as that afterwards given to the feelings of his son James by the reply of the aged father of Lord Russell. See Notes to Lord Russell's Case, A. D. 1683, post.

Dec. 6. The Members were secured by col. Pride.

Dec. 7. The House of Commons appointed a day of humiliation; Peters, Caryl, and Marshal, to perform the duty.

The several Votes, 1. For revoking the Votes for Non-addresses to the king; 2. For a Treaty to be had with him; 3. That his Answers to the Propositions were a ground for Peace, voted dishonourable and destructive.

Dec. 23. A committee was appointed to consider how to proceed in a way of justice against the King and other capital offenders.

Dec. 28. An Ordinance for Trial of the King was read.

January 1, 1649. Declared and adjudged by the Commons, That by the fundamental laws it is Treason in the King of England, for the time being, to levy war against the parliament and kingdom.

Jan. 2. The Lords disagreed to this Vote, and cast it out, and the Ordinance for Trial of the King, *nemine contradicente*.

Jan. 3. The same Vote was again put to the question in the House of Commons, and carried in the affirmative.

Jan. 4. Master Garland presents a new Ordinance ‡ for erecting an High Court of Justice for Trial of the King; which was read the first, second, and third time, assented to, and passed the same day. And ordered, no Copy to be delivered.

Same day, Resolved, That the people are (un-

‡ Whitelocke carefully abstained from any share in these transactions. The following particulars are extracted from his Memorials : " Dec. 26, 1648. This morning sir Thomas Widdrington and Mr. Whitelocke being together, Mr. Smith who was Clerk to the Committee for preparing the Charge against the King, came to them with a Message from the Committee, that they required them to come to them this day, they having some matters of importance wherein they desired their advice, and assistance; and that they must not fail them. They knew what the business was, and Whitelocke told sir T. Widdrington, that he was resolved not to meddle in that business about the Trial of the King; it being contrary to his judgment, as he had himself declared in the house. Sir T. Widdrington said, he was of the same judgment, and would have no hand in that business, but he knew not whither to go, to be out of the way; and that the Committee might not know whither to send to him. Whitelocke re-

der God) the original of all just powers. That themselves, being chosen by and representing

the people, have the Supreme Power in the nation.\* That whatsoever is enacted, or de-

plied, That his coach was ready, and he was this morning going out of town purposely to avoid this business, and if he pleased to go with him, they might be quiet at his house in the country till this business should be over, and he should be glad of his company. He willingly consented to go with Whitelock, and was not long in preparing himself for the journey."—*"January 9, 1619. Widdrington and Whitelock by agreement went into the house this morning, the Trial of the King being begun, some looked very shy upon them, others bid them welcome, and seemed glad to see them there."*—Whitelock consented to accept the office of Commissioner of the new Great Seal, (which Widdrington from scrupling the authority of the House of Commons refused to do) and in a speech in which he offered some reasons for wishing to decline that office, he distinctly, though warily and with mention of the ground of necessity, asserted the sufficiency of the House. He also acted as a Member of the Council of State, but when as such he was demanded to subscribe the test appointed by parliament for approving all that was done concerning the King and Kingship, and for taking away the House of Lords," &c. he tells us, that "he scrupled that part of approving the proceedings of the High Court of Justice, because he was not privy to them, nor did know what they were in particular, nor ever heard any report of them made to the house; and not knowing what they were, he could not sign that paper, to approve of them." Nevertheless, he afterwards prepared and brought in the Declaration to satisfy the people touching the 'proceedings of parliament,' as he gently expresses it, which however he says the Committee "made much sharper than he had drawn it, and added divers clauses which he thought matters fit to be omitted." See this Declaration in 3 Cobb. Parl. Hist. 1319. Oldmixon says it was published in English, Latin, French, and Dutch.—Whitelock also prepared the act for taking away the House of Lords; or, in his own words, "It was put upon Whitelock to draw an Act to take away the House of Lords, wherein he desired to have been excused in regard he was not in the house when the Vote passed, and had declared his opinion against it, but he could not get excused."

\* Of the Debates which led to the Trial of the King, lord Clarendon writes thus;

"It hath been acknowledged by some officers, and others who were present at the consultations, that from the time of the king's being at Hampton Court, and after the army had mastered both the parliament and the city, and were weary of having the king with them, and knew not well how to be rid of him, there were many secret consults what to do with him. And it was generally concluded, 'they should never be able to settle their new form of go-

'verament, whilst he lived;' and after he was become a prisoner in the Isle of Wight, they were more solicitous for a resolution and determination in that particular: and after the vote of no more addresses, the most violent party thought 'they could do nothing in order to their own ends, till he should be first dead; and therefore, one way or other, that was to be compassed in the first place.' Some were for 'an actual deposing him; which could not but be easily brought to pass, since the parliament would vote any thing they should be directed.' Others were for 'the taking away his life by poison, which would make least noise;' or, 'if that could not be so easily contrived, by assassination; for which there were hands enough ready to be employed.' There was a third sort, as violent as either of the other, who pressed 'to have him brought to a public trial as a malefactor; which,' they said, 'would be most for the honour of the parliament, and would teach all kings to know, that they were accountable and punishable for the wickedness of their lives.'—Many of the officers were of the first opinion, 'as a thing they had precedents for; and that he being once deposed, they could better settle the government than if he were dead; for his son could pretend no right whilst he was alive; whereas, if the father were dead, he would presently call himself King, and others would call him so too; and, it may be, other kings and princes would own him for such. If he were kept alive in a close prison, he might afterwards be made use of, or removed upon any appearance of a revolution.'—There were as many officers of the second judgment 'that he should be presently dispatched.' They said, 'it appeared by the experience they had, that whilst he was alive (for a more strict imprisonment than he had undergone he could never be confined to) there would be always plots and designs to set him at liberty; and he would have parties throughout the kingdom, and, in a short time, a faction in their most secret councils, and it may be in the army itself; and, where his liberty would yield so great a price, it would be too great a trust to repose in any man, that he would long resist the temptation. Whereas, if he were confessedly dead, all those fears would be over, especially if they proceeded with that circumspection and severity towards all his party, as in prudence they ought to do.' This party might probably have carried it, if Hammond could have been wrought upon to have concurred; but he had yet too much conscience to expose himself to that infamy, and without his privity or connivance it could not be done.—The third party, which were all the levellers and agitators of the army, in the head of which Ireton and Harrison were, would not endure either of the other ways, and said, 'they could as easily bring him to justice in the

clared for law by the Commons in parliament, hath the force of a law, and the people con-

cluded thereby: though consent of King and Peers be not had thereunto.

'sight of the sun, as depose him, since the authority of the parliament could do one as well as the other: that their precedent of deposing had no reputation with the people, but was looked upon as the effect of some potent faction, which always oppressed the people more after, than they had been before. Besides, those depositions had always been attended with assassinations and murders, which were the more odious and detested, because nobody owned and avowed the bloody actions they had done. But if he were brought to a public trial, for the notorious ill things he had done, and for his misgovernment, upon the complaint and prosecution of the people, the superiority of the people would be hereby vindicated and made manifest; and they should receive the benefit, and be for ever free from those oppressions which he had imposed upon them, and for which he ought to pay so dear; and such an exemplary proceeding and execution as this, where every circumstance should be clear and notorious, would be the best foundation and security of the government they intended to establish, and no

'man would be ambitious to succeed him, and be a king in his place, when he saw in what manner he must be accountable to the people.' This argumentation, or the strength and obstinacy of that party, carried it; and, hereupon, all that formality of proceeding, which afterwards was exercised, was resolved upon and consented to.—Whether the incredibility or monstrousness of such a kind of proceeding, wrought upon the minds of men, or whether the principal actors took pains, by their insinuations, to have it so believed; it fell out, however, that they among them who wished the king best, and stood nearest to the stage where these parts were acted, did not believe that there were those horrid intentions that shortly after appeared. The preachers, who had sounded the trumpets loudest to, and throughout the war, preached now as furiously against all wicked attempts and violence against the person of the king, and foolishly urged the obligation of the Covenant (by which they had involved him in all the danger he was in) for the security of his person."

**A perfect NARRATIVE of the whole PROCEEDINGS of the HIGH COURT OF JUSTICE, in the Trial of the KING, in Westminster-Hall. With the several Speeches of the King, Lord President, and Solicitor General. Published by Authority, to prevent false and impertinent Relations. January 20—27. A.D. 1649. Licensed by Gilbert Mabbot.**

ON Saturday, being the 20th day of January, 1649, the Lord President of the High Court of Justice, with near fourscore of the members of the said Court, having sixteen gentlemen with partizans, and a sword, and a mace, with their and other officers of the said court, marching before them, came to the place ordered to be prepared for their sitting at the west-end of the great Hall at Westminster; where the Lord President, in a crimson-velvet chair, fixed in the midst of the Court, placed himself, having a desk with a crimson-velvet cushion before him; the rest of the members placing themselves on each side of him upon several seats, or benches, prepared and hung with scarlet for that purpose; and the partizans dividing themselves on each side of the court before them.

The Court being thus sat, and Silence made, the great gate of the said Hall was set open, to the end that all persons, without exception, desirous to see or hear, might come into it. Upon which the Hall was presently filled, and silence again ordered.

This done, colonel Thomlinson, who had the charge of the Prisoner, was commanded to bring him to the Court; who within a quarter of an hour's space brought him, attended with

about twenty officers with partizans, marching before him, there being other gentlemen, to whose care and custody he was likewise committed, marching in his rear.

Being thus brought up within the face of the Court, the Serjeant at Arms, with his mace, receives and conducts him strait to the bar, having a crimson-velvet chair set before him. After a stern looking upon the Court, and the people in the galleries on each side of him, he places himself, not at all moving his hat, or otherwise shewing the least respect to the court; but presently rises up again, and turns about, looking downwards upon the guards placed on the left side, and on the multitude of spectators on the right side of the said great Hall. After silence made among the people, the Act of Parliament for the trying of Charles Stuart, king of England, was read over by the Clerk of the Court, who sat on one side of a table covered with a rich Turkey-carpet, and placed at the feet of the said Lord-President; upon which table was also laid the sword and mace.

After reading the said Act, the several names of the Commissioners were called over, every one who was present, being eighty, as aforesaid, rising up, and answering to his call.

Having again placed himself in his Chair, with his face towards the Court, silence being again ordered, the Lord President stood up, and said,

*Lord President.* Charles Stuart, king of England, the Commons of England assembled in parliament being deeply sensible of the calamities that have been brought upon this nation, which is fixed upon you as the principal author of it, have resolved to make inquisition for blood; and according to that debt and duty they owe to justice, to God, the kingdom, and themselves, and according to the fundamental power that rests in themselves, they have resolved to bring you to Trial and Judgment; and for that purpose have constituted this High Court of Justice, before which you are brought.

This said, Mr. Cook, Solicitor for the Commonwealth, standing within a bar on the right hand of the Prisoner, offered to speak: but the king having a staff in his hand, held it up, and laid it upon the said Mr. Cook's shoulder two or three times, bidding him hold. Nevertheless, the Lord President ordering him to go on, he said:

*Mr. Cook.* My lord, I am commanded to charge Charles Stuart, King of England, in the name of the Commons of England, with Treason and High Misdemeanors; I desire the said Charge may be read.

The said Charge being delivered to the Clerk of the Court, the Lord President ordered it should be read; but the king bid him hold. Nevertheless, being commanded by the Lord President to read it, the Clerk began, and the Prisoner sat down again in his chair, looking sometimes on the High Court, sometimes up to the Galleries; and having risen again, and turned about to behold the guards and spectators, sat down, looking very sternly, and with a countenance not at all moved, till these words, viz. 'Charles Stuart to be a Tyrant and Traitor, &c.' were read; at which he laughed, as he sat, in the face of the Court.

The Charge being read, the Lord President replied:

*Lord President.* Sir, You have now heard your Charge, containing such matter as appears in it; you find, that in the close of it, it is prayed to the Court, in the behalf of the commons of England, that you answer to your Charge. The Court expects your Answer.

*King.* I would know by what power I am called hither; I was not long ago in the Isle of Wight; how I came there, is a longer story than I think it fit at this present time for me to speak of; but there I entered into a Treaty with both houses of parliament, with as much public faith as it is possible to be had of any people in the world. I treated there with a number of honourable lords and gentlemen, and treated honestly and uprightly; I cannot say but they did very nobly with me, we were upon the conclusion of the Treaty. Now I would know by what authority, I mean lawful; there are many unlawful authorities in the

world, thieves and robbers by the highways; but I would know by what authority I was brought from thence, and carried from place to place, and I know not what: and when I know what lawful authority, I shall answer. Remember I am your king, your lawful king, and what sins you bring upon your heads, and the judgment of God upon this land; think well upon it, I say, think well upon it, before you go further from one sin to a greater: therefore let me know by what lawful authority I am seated here, and I shall not be unwilling to answer. In the mean time, I shall not betray my trust; I have a trust committed to me by God, by old and lawful descent; I will not betray it, to answer to a new unlawful authority: therefore resolve me that, and you shall hear more of me.

*Lord President.* If you had been pleased to have observed what was hinted to you by the Court, at your first coming hither, you would have known by what authority; which authority requires you, in the name of the people of England, of which you are elected king, to answer them.

*King.* No, Sir, I deny that.

*Lord President.* If you acknowledge not the authority of the Court, they must proceed.

*King.* I do tell them so; England was never an elective kingdom, but an hereditary kingdom for near these thousand years; therefore let me know by what authority I am called hither: I do stand more for the Liberty of my people, than any here that come to be my pretended Judges; and therefore let me know by what lawful authority I am seated here, and I will answer it; otherwise I will not answer it.

*Ld. President.* Sir, how really you have managed your trust, is known: your way of answer is to interrogate the Court, which becomes not you in this condition. You have been told of it twice or thrice.

*King.* Here is a gentleman, lieutenant colonel Cobbet; ask him, if he did not bring me from the Isle of Wight by force. I do not come here as submitting to the Court: I will stand as much for the privilege of the house of commons, rightly understood, as any man here whatsoever. I see no house of lords here that may constitute a parliament; and the king too should have beef. Is this the bringing of the king to his parliament? Is this the bringing an end to the Treaty in the public faith of the world? Let me see a legal authority warranted by the Word of God, the Scriptures, or warranted by the Constitutions of the kingdom, and I will answer.

*Ld. President.* Sir; You have propounded a question, and have been answered. Seeing you will not answer, the Court will consider how to proceed: in the mean time, those that brought you hither, are to take charge of you back again. The Court desires to know, whether this be all the Answer you will give, or no.

*King.* Sir, I desire that you would give me, and all the world, satisfaction in this: let me tell you, it is not a slight thing you are about.

'I am sworn to keep the peace, by that duty I owe to God and my country, and I will do it to the last breath of my body; and therefore ye shall do well to satisfy first God, and then the country, by what authority you do it: if you do it by an usurped authority, you cannot answer. There is a God in Heaven, that will call you, and all that give you power, to account. Satisfy me in that, and I will answer; otherwise I betray my Trust, and the Liberties of the people: and therefore think of that, and then I shall be willing. For I do avow, that it is as great a sin to withstand lawful authority, as it is to submit to a tyrannical, or any other ways unlawful authority; and therefore satisfy me that, and you shall receive my answer.

*Ld. President.* The Court expects you should give them a final Answer; their purpose is to adjourn to Monday next; if you do not satisfy yourself, though we do tell you our authority, we are satisfied with our authority, and it is upon God's authority and the kingdom's; and that peace you speak of will be kept in the doing of justice, and that is our present work.

*King.* For answer, let me tell you, you have shewn no lawful authority to satisfy any reasonable man.

*Ld. President.* That is, in your apprehension; we are satisfied that are your Judges.

*King.* It is not my apprehension, nor yours neither, that ought to decide it.

*Ld. President.* The Court hath heard you, and you are to be disposed of as they have commanded.

The Court adjourns to the Painted Chamber, on Monday at ten of the clock in the forenoon, and thence hither.

It is to be observed that as the Charge was reading against the king, the head of his Staff fell off, which he wondered at; and seeing none to take it up, he stoops for it himself.

As the King went away, facing the Court, he said, 'I do not fear that' (meaning the Sword). The People in the Hall, as he went down the stairs, cried out, some, 'God save the King,' and most for 'Justice.'

*At the High Court of Justice sitting in Westminster Hall, Monday, Jan. 22, 1649.*

O Yes! made; Silence commanded; the Court called, and answered to their names. Silence commanded upon pain of imprisonment, and the Captain of the Guard to apprehend all such as make disturbance. Upon the king's coming in, a shout was made. Command given by the Court to the Captain of the Guard, to fetch and take into his custody those who make any disturbance.

*Mr. Solicitor.* May it please your lordship, my Lord President; I did at the last court in the behalf of the Commons of England, exhibit and give in to this court a Charge of High Treason, and other High Crimes, against the prisoner at the bar; whereof I do accuse him in

the name of the People of England: and the Charge was read unto him, and his Answer required. My lord, He was not then pleased to give an Answer, but instead of answering, did there dispute the Authority of this high Court. My humble motion to this high Court in behalf of the kingdom of England is, That the prisoner may be directed to make a positive Answer, either by way of confession, or negation; which if he shall refuse to do, that the matter of the Charge may be taken *pro confesso*, and the Court may proceed according to justice.

*Ld. President.* Sir, You may remember at the last Court you were told the occasion of your being brought hither, and you heard a Charge read against you, containing a Charge of High-Treason and other high crimes against this realm of England: you heard likewise, that it was prayed in the behalf of the People, that you should give an Answer to that Charge, that thereupon such proceedings might be had, as should be agreeable to justice. You were then pleased to make some scruples concerning the authority of this Court, and knew not by what authority you were brought hither: you did divers times propound your questions, and were as often answered, That it was by authority of the Commons of England assembled in parliament, that did think fit to call you to account for those high and capital Misdemeanours wherewith you were then charged. Since that the Court hath taken into consideration what you then said; they are fully satisfied with their own authority, and they hold it fit you should stand satisfied with it too; and they do require it, that you do give a positive and particular Answer to this Charge that is exhibited against you: they do expect you should either confess or deny it; if you deny, it is offered in the behalf of the kingdom to be made good against you: their authority they do avow to the whole world, that the whole kingdom are to rest satisfied in, and you are to rest satisfied with it. And therefore you are to lose no more time, but to give a positive Answer thereunto.

*King.* When I was here last, it is very true, I made that question; truly if it were only my own particular Case, I would have satisfied myself with the protestation I made the last time I was here against the Legality of this Court, and that a king cannot be tried by any superior jurisdiction on earth; but it is not my case alone, it is the Freedom and the Liberty of the people of England; and do you pretend what you will, I stand more for their Liberties. For if power without law may make laws, may alter the fundamental laws of the kingdom, I do not know what subject he is in England, that can be sure of his life, or any thing that he calls his own: therefore when that I came here, I did expect particular reasons to know by what law, what authority you did proceed against me here. And therefore I am a little to seek what to say to you in this particular, because the affirmative is to be proved, the negative often is very hard to do: but since I cannot persuade you to do it, I shall tell you

my reasons as short as I can.—My Reasons why in conscience and the duty I owe to God first, and my people next, for the preservation of their lives, liberties, and estates, I conceive I cannot answer this, till I be satisfied of the legality of it.—All proceedings against any man whatsoever—

*Id. President.* Sir, I must interrupt you, which I would not do, but that what you do is not agreeable to the proceedings of any court of justice: You are about to enter into argument, and dispute concerning the Authority of this Court, before whom you appear as a Prisoner, and are charged as an high Delinquent; if you take upon you to dispute the Authority of the Court, we may not do it, nor will any court give way unto it: you are to submit unto it, you are to give a punctual and direct Answer, whether you will answer your Charge or no, and what your Answer is.

*King.* Sir, By your favour, I do not know the forms of law; I do know law and reason, though I am no lawyer professed; but I know as much law as any gentleman in England; and therefore (under favour), I do plead for the Liberties of the people of England more than you do: and therefore if I should impose a belief upon any man, without reasons given for it, it were unreasonable; but I must tell you, that that reason that I have, as thus informed, I cannot yield unto it.

*Id. President.* Sir, I must interrupt you, you may not be permitted; you speak of law and reason; it is fit there should be law and reason, and there is both against you. Sir, the Vote of the Commons of England assembled in parliament, it is the reason of the kingdom, and they are these that have given to that law, according to which you should have ruled and reigned. Sir, you are not to dispute our Authority, you are told it again by the Court. Sir, it will be taken notice of, that you stand in contempt of the Court, and your contempt will be recorded accordingly.

*King.* I do not know how a king can be a Delinquent; but by any law that ever I heard of, all men (Delinquents, or what you will), let me tell you, they may put in Demurrers against any proceeding as legal: and I do demand that, and demand to be heard with my Reasons; if you deny that, you deny reason.

*Id. President.* Sir, you have offered something to the Court; I shall speak something unto you, the Sense of the Court. Sir, neither you nor any man are permitted to dispute that point; you are concluded, you may not demur to the jurisdiction of the Court: if you do, I must let you know, that they over-rule your Demurrer; they sit here by the authority of the Commons of England, and all your predecessors and you are responsible to them.

*King.* I deny that; shew me one precedent.

*Id. President.* Sir, you ought not to interrupt while the Court is speaking to you. This point is not to be debated by you, neither will the Court permit you to do it: if you offer it by way of Demurrer to the Jurisdiction of the

Court, they have considered of their Jurisdiction, they do affirm their own Jurisdiction.

*King.* I say, Sir, by your favour, that the Commons of England was never a Court of Judicature; I would know how they came to be so.

*Id. President.* Sir, you are not to be permitted to go on in that Speech and these discourses.

Then the clerk of the court read as followeth:

‘Charles Stuart, king of England, You have been accused on behalf of the People of England of High-Treasons, and other high Crimes; the Court have determined that you ought to answer the same.’

*King.* I will answer the same so soon as I know by what Authority you do this.

*Id. President.* If this be all that you will say, then, Gentlemen, you that brought the Prisoner hither, take charge of him back again.

*King.* I do require that I may give in my Reasons why I do not answer, and give me time for that.

*Id. President.* Sir, it is not for Prisoners to require.

*King.* Prisoners! Sir, I am not an ordinary prisoner.

*Id. President.* The Court hath considered of their jurisdiction, and they have already affirmed their jurisdiction; if you will not answer, we shall give order to record your default.

*King.* You never heard my Reasons yet.

*Id. President.* Sir, your Reasons are not to be heard against the highest jurisdiction.

*King.* Shew me that Jurisdiction where reason is not to be heard.

*Id. President.* Sir, we shew it you here, The Commons of England; and the next time you are brought, you will know more of the pleasure of the Court; and, it may be, their final determination.

*King.* Shew me where ever the House of Commons was a Court of Judicature of that kind.

*Id. President.* Serjeant, take away the Prisoner.

*King.* Well, Sir, remember that the king is not suffered to give in his Reasons for the Liberty and Freedom of all his Subjects.

*Id. President.* Sir, you are not to have Liberty to use this language: How great a friend you have been to the Laws and Liberties of the people, let all England and the world judge.

*King.* Sir, under favour, it was the Liberty, Freedom, and Laws of the subject, that ever I took—defended myself with arms; I never took up arms against the people, but for the laws.

*Id. President.* The command of the Court must be obeyed; no Answer will be given to the Charge.

*King.* Well, Sir!

And so he was guarded forth to sir Robert Cotton's house.

Then the Court adjourned to the Painted chamber, on Tuesday at 12 o'clock, and from thence they intend to adjourn to Westminster-hall; at which time all persons concerned are to give their attendance.

*At the High Court of Justice sitting in Westminster-Hall, Tuesday Jun. 23, 1649.*

O Yes made, Silence commanded, the Court called, 73 persons present.—The King comes in with his guard, looks with an austere countenance upon the Court, and sits down.—The second O Yes made, and Silence commanded.

Mr. Cook, Solicitor-General. May it please your lordship, my lord President; this is now the third time, that by the great grace and favour of this High Court, the Prisoner hath been brought to the bar before any issue joined in the cause. My lord, I did at the first court exhibit a Charge against him, containing the highest Treasons that ever was wrought upon the theatre of England; That a king of England, trusted to keep the law, that had taken an oath so to do, that had tribute paid him for that end, should be guilty of a wicked Design to subvert and destroy our Laws, and introduce an Arbitrary and Tyrannical Government, in defiance of the Parliament and their Authority, set up his standard for War against his Parliament and People: And I did humbly pray, in the behalf of the people of England, that he might speedily be required to make an Answer to the Charge.—But, my lord, instead of making any Answer, he did then dispute the Authority of this High Court. Your lordship was pleased to give him a further day to consider, and to put in his Answer; which day being Yesterday, I did humbly move, that he might be required to give a direct and positive Answer, either by denying or confession of it; But, my lord, he was then pleased for to demur to the Jurisdiction of the Court; which the court did then over-rule, and commanded him to give a direct and positive Answer. My lord, besides this great delay of justice, I shall now humbly move your lordship for speedy Judgment against him. My lord, I might press your lordship upon the whole, that according to the known rules of the law of the land, That if a Prisoner shall stand as contumacious in contempt, and shall not put in an issuable plea, Guilty or not Guilty of the Charge given against him, whereby he may come to a fair trial; that, as by an implicit confession, it may be taken *pro confesso*, as it hath been done to those who have deserved more favour than the Prisoner at the bar has done. But besides, my lord, I shall humbly press your lordship upon the whole fact. The house of commons, the supreme Authority and Jurisdiction of the kingdom, they have declared, That it is notorious, that the matter of the Charge is true, as it is in truth, my lord, as clear as crystal, and as the sun that shines at noon-day: which if your lordship and the Court be not satisfied in, I have notwithstanding, on the people of England's behalf, several Witnesses to pro-

duce. And therefore I do humbly pray, and yet I must confess it is not so much I, as the innocent blood that hath been shed, the cry whereof is very great for justice and judgment; and therefore I do humbly pray, that speedy Judgment be pronounced against the Prisoner at the bar.

*Lord President.* Sir, you have heard what is moved by the Counsel on the behalf of the kingdom against you. Sir, you may well remember, and if you do not, the Court cannot forget, what dilatory dealings the Court hath found at your hands. You were pleased to propound some Questions, you have had our Resolutions upon them. You were told, over and over again, That the Court did affirm their own jurisdiction; that it was not for you, nor any other man, to dispute the jurisdiction of the supreme and highest Authority of England, from which there is no appeal, and touching which there must be no dispute: yet you did persist in such carriage, as you gave no manner of obedience, nor did you acknowledge any authority in them, nor the High Court that constituted this Court of Justice.—Sir, I must let you know from the Court, that they are very sensible of these delays of your's, and that they ought not, being thus authorized by the supreme Court of England, to be thus trifled withal; and that they might in justice, if they pleased, and according to the rules of justice, take advantage of these delays, and proceed to pronounce judgment against you: yet nevertheless they are pleased to give direction, and on their behalfs I do require you, that you make a positive Answer unto this Charge that is against you, Sir, in plain terms, for Justice knows no respect of persons; you are to give your positive and final Answer in plain English, whether you be Guilty or Not Guilty of these Treasons laid to your charge.

The King, after a little pause, said,

*King.* When I was here yesterday, I did desire to speak for the Liberties of the people of England; I was interrupted; I desire to know yet whether I may speak freely or not.

*Lord President.* Sir, you have had the Resolution of the Court upon the like question the last day, and you were told, that having such a Charge of so high a nature against you, and your work was, that you ought to acknowledge the jurisdiction of the Court, and to answer to your Charge. Sir, if you answer to your Charge, which the Court gives you leave now to do, though they might have taken the advantage of your contempt; yet if you be able to answer to your Charge, when you have once answered, you shall be heard at large, make the best defence you can. But, Sir, I must let you know from the Court, as their commands, that you are not to be permitted to issue out into any other discourses, till such time as you have given a positive Answer concerning the matter that is charged upon you.

*King.* For the Charge, I value it not a rush; it is the Liberty of the People of Eng-

land that I stand for. For me to acknowledge a new Court that I never heard of before, I that am your King, that should be an example to all the people of England, for to uphold justice, to maintain the old laws; indeed I do not know how to do it. You spoke very well the first day that I came here (on-Saturday) of the obligations that I had laid upon me by God, to the maintenance of the Liberties of my people; the same obligation you spoke of, I do acknowledge to God that I owe to him, and to my people, to defend as much as in me lies the ancient laws of the kingdom: therefore, until that I may know that this is not against the fundamental Laws of the kingdom, by your favour I can put in no particular Charge. (\*) If you will give me time, I will shew you my Reasons why I cannot do it, and this—

Here, being interrupted, he said,

By your favour, you ought not to interrupt me: how I came here, I know not; there's no law for it to make your king your prisoner. I was in a Treaty upon the public faith of the kingdom, that was the known—(†) two Houses of Parliament that was the representative of the kingdom; and when that I had almost made an end of the Treaty, then I was hurried away, and brought hither: and therefore—

Here the Lord President said, Sir, you must know the pleasure of the Court.

King. By your favour, sir.

Lord President. Nay, sir, by your favour, you may not be permitted to fall into those discourses; you appear as a Delinquent, you have not acknowledged the authority of the Court, the Court craves it not of you; but once more they command you to give your positive Answer.—Clerk, do your duty.

King. Duty, sir!

The Clerk reads.

"Charles Stuart, king of England, you are "accused in behalf of the commons of England "of divers Crimes and Treasons, which Charge "hath been read unto you; the Court now requires you to give your positive and final Answer, by way of confession or denial of the "Charge."

King. Sir, I say again to you, so that I might give satisfaction to the people of England of the clearness of my proceeding, not by way of Answer, not in this way, but to satisfy them that I have done nothing against that trust that has been committed to me, I would do it; but to acknowledge a new Court, against their Privileges, to alter the fundamental laws of the kingdom—sir, you must excuse me.

(\*) "This is as the king expressed it; but I suppose he meant Answer."—Former Edition.

(†) Clement Walker says, "Whether these breaches and interruptions were made by Bradshaw, or are omissions and expunctions of some material parts of the king's speech, which this licensed penman durst not set down, I know not. I hear much of the king's argument is omitted, and much depraved, none but licensed men being suffered to take notes."

Lord President. Sir, this is the third time that you have publicly disowned this Court, and put an affront upon it. How far you have preserved the privileges of the People, your actions have spoke it; but truly, Sir, men's intentions ought to be known by their actions; you have written your meaning in bloody characters throughout the whole kingdom. But, Sir, you understand the pleasure of the Court.—Clerk, Record the Default.—And, Gentlemen, you that took charge of the Prisoner, take him back again.

King. I will only say this one word more to you: If it were only my own particular, I would not say any more, nor interrupt you.

Lord President. Sir, you have heard the pleasure of the Court, and you are (notwithstanding you will not understand it) to find that you are before a court of justice.

Then the King went forth with his guard, and proclamation was made, That all persons which had then appeared, and had further to do at the Court, might depart into the Painted Chamber; to which place the Court did forthwith adjourn, and intended to meet in Westminster Hall by ten of the clock next morning.

Cryer. God bless the kingdom of England!

Wednesday, January 24th, 1649.

This day it was expected the High Court of Justice would have met in Westminster Hall, about ten of the clock; but at the time appointed, one of the Ushers, by direction of the Court (then sitting in the Painted Chamber) gave notice to the people there assembled, That in regard the Court was then upon the Examination of Witnesses, in relation to present affairs, in the Painted Chamber, they could not sit there; but all persons appointed to be there, were to appear upon further summons.

*The Proceedings of the High Court of Justice sitting in Westminster-Hall, on Saturday the 27th of January 1649.*

O Yes made; Silence commanded; the court called; Serjeant Bradshaw Lord President (in a scarlet robe), with sixty-eight other members of the court.

As the King comes in, a Cry made in the Hall for Execution! Justice! Execution!

King. I shall desire a word to be heard a little, and I hope I shall give no occasion of interruption.

Ld. President. You may answer in your time, hear the Court first.

King. If it please you, Sir, I desire to be heard, and I shall not give any occasion of interruption, and it is only in a word: a sudden Judgment.

Ld. President. Sir, you shall be heard in due time, but you are to hear the Court first.

King. Sir, I desire—it will be in order to what I believe the Court will say; and therefore, Sir an hasty Judgment is not so soon recalled.

Ld. President. Sir, you shall be heard be-

fore the Judgment be given, and in the mean time you may forbear.

*King.* Well, Sir, shall I be heard before the Judgment be given?

*Ld. President.* Gentlemen, it is well known to all, or most of you here present, that the Prisoner at the Bar hath been several times convened and brought before the Court to make answer to a Charge of Treason, and other high Crimes exhibited against him in the name of the people of England; [Here a malignant lady (Lady Fairfax) interrupted the Court, saying, 'Not half the People;' but she was soon silenced. See the Trial of Daniel Axtell, Oct. 15, 1660.] to which Charge being required to answer he hath been so far from obeying the commands of the Court by submitting to their justice, as he began to take upon him to offer reasoning and debate unto the Authority of the Court, and of the highest court that constituted them to try and judge him: but being over-ruled in that, and required to make his Answer, he was still pleased to continue contumacious, and to refuse to submit or answer. Hereupon the Court, that they may not be wanting to themselves, to the trust reposed in them, nor that any man's wilfulness prevent justice, they have thought fit to take the matter into their consideration; they have considered of the Charge, they have considered of the Contumacy, and of that Confession, which in law doth arise upon that contumacy: they have likewise considered of the notoriety of the fact charged upon this Prisoner, and upon the whole matter they are resolved, and have agreed upon a Sentence to be now pronounced against this Prisoner: but in respect he doth desire to be heard, before the Sentence be read and pronounced, the Court hath resolved that they will hear him. Yet, Sir, thus much I must tell you beforehand, which you have been minded of at other courts, that if that you have to say be to offer any debate concerning jurisdiction, you are not to be heard in it; you have offered it formerly, and you have indeed struck at the root, that is, the power and supreme authority of the Commons of England, which this Court will not admit a debate of; and which indeed is an irrational thing in them to do, being a court that acts upon authority derived from them, that they should presume to judge upon their superior, from whom there is no appeal. But, Sir, if you have any thing to say in defence of yourself concerning the matter charged, the Court hath given me in command to let you know they will hear you.

*King.* Since that I see that you will not hear any thing of debate concerning that which I confess I thought most material for the Peace of the Kingdom, and for the Liberty of the Subject, I shall waive it; I shall speak nothing to it, but only I must tell you, that this many a-day all things have been taken away from me, but that, that I call more dear to me than my life, which is my conscience and my honour: and if I had respect to my life more than the Peace of the Kingdom, the Liberty of the Sub-

ject, certainly I should have made a particular Defence for myself; for by that at leastwise I might have delayed an ugly Sentence, which I believe will pass upon me. Therefore certainly, Sir, as a man that hath some understanding, some knowledge of the world, if that my true zeal to my country had not over-born the care that I have of my own preservation, I should have gone another way to work than that I have done. Now, Sir, I conceive, that an hasty Sentence once passed, may sooner be repented than recalled; and truly, the self-same desire that I have for the Peace of the Kingdom, and the Liberty of the subject, more than my own particular, does make me now at last desire, that having something for to say that concerns both, I desire before Sentence be given, that I may be heard in the Painted-Chamber before the Lords and Commons. This delay cannot be prejudicial to you, whatsoever I say; if that I say no reason, those that hear me must be judges: I cannot be judge of that, which I have: if it be reason, and really for the welfare of the kingdom, and the liberty of the subject, I am sure on't, very well it is worth the hearing; therefore I do conjure you, as you love that which you pretend, I hope it is real, the Liberty of the Subject, the Peace of the Kingdom, that you will grant me the hearing, before any Sentence be past. I only desire this, that you will take this into your consideration, it may be you have not heard of it before-hand; if you will, I'll retire, and you may think of it; but if I cannot get this liberty, I do here protest, that so fair shews of Liberty and Peace are pure shews, and not otherwise, since you will not hear your king.

*Ld. President.* Sir, you have now spoken.

*King.* Yes, Sir.

*Ld. President.* And this that you have said is a further declining of the Jurisdiction of this Court, which was the thing wherein you were limited before.

*King.* Pray excuse me, Sir, for my interruption, because you mistake me; it is not a declining of it, you do judge me before you hear me speak: I say it will not, I do not decline it, though I cannot acknowledge the Jurisdiction of the Court; yet, Sir, in this give me leave to say, I would do it, though I do not by this acknowledge it, I do protest it is not the declining of it, since I say, if that I do say any thing, but that which is for the Peace of the Kingdom, and the Liberty of the Subject, then the shame is mine. Now I desire that you will take this into your consideration; if you will, I'll withdraw.

*Ld. President.* Sir, this is not altogether new that you have moved unto us, not altogether new to us, though it is the first time in person you have offered it to the Court. Sir, you say you do not decline the Jurisdiction of the Court.

*King.* Not in this that I have said.

*Ld. President.* I understand you well, Sir; but nevertheless, that which you have offered seems to be contrary to that saying of yours:

for the Court are ready to give a Sentence: It is not as you say, That they will not hear your king; for they have been ready to hear you they have patiently waited your pleasure for three Courts together, to hear what you would say to the People's Charge against you, to which you have not vouchsafed to give any Answer at all. Sir, this tends to a further delay; truly, Sir, such delays as these, neither may the kingdom nor justice well bear; you have had three several days to have offered in this kind what you would have pleased. This Court is founded upon that Authority of the Commons of England, in whom rests the supreme jurisdiction; that which you now tender, is to have another jurisdiction, and a co-ordinate jurisdiction. I know very well you express yourself, Sir, that notwithstanding that you would offer to the Lords and Commons in the Painted Chamber, yet nevertheless you would proceed on here, I did hear you say so. But, Sir, that you would offer there, whatever it is, it must needs be in delay of the Justice here; so as if this Court be resolved, and prepared for the Sentence, this that you offer they are not bound in justice to grant: But, Sir, according to what you seem to desire, and because you shall know the further pleasure of the Court upon that which you have moved, the Court will withdraw for a time.

*King.* Shall I withdraw?

*Ld. President.* Sir, you shall know the pleasure of the Court presently.

The Court withdraws for half an hour into the Court of Wards.

*Serjeant at Arms.* The Court gives command, that the Prisoner be withdrawn; and they give order for his return again.

The Court withdraws for half an hour, and returns.

*Ld. President.* Serjeant at Arms, send for your Prisoner.

Sir, you were pleased to make a motion here to the Court to offer a desire of yours, touching the propounding of somewhat to the Lords in the Painted Chamber, for the peace of the kingdom: Sir, you did, in effect, receive an Answer before the Court adjourned; truly, Sir, their withdrawing and adjournment was *pro forma tantum*: for it did not seem to them that there was any difficulty in the thing: they have considered of what you have moved, and have considered of their own Authority, which is founded, as hath been often said, upon the supreme Authority of the Commons of England assembled in parliament: the Court acts according to their Commission. Sir, the return I have to you from the Court, is this: That they have been too much delayed by you already, and this that you now offer hath occasioned some little further delay; and they are Judges appointed by the highest Judges; and Judges are no more to delay, than they are to deny Justice: they are good words in the great old Charter of England; *Nulli negabimus, nulli vendemus, nulli differemus Justitiam*. There must be no delay; but the truth is, Sir, and so

every man here observes it, that you have much delayed them in your Contempt and Default, for which they might long since have proceeded to Judgment against you; and notwithstanding what you have offered, they are resolved to proceed to Punishment, and to Judgment, and that is their unanimous Resolution.

*King.* Sir, I know it is in vain for me to dispute, I am no sceptic for to deny the Power that you have; I know that you have Power enough: Sir, I confess, I think it would have been for the kingdom's peace, if you would have taken the pains for to have shewn the lawfulness of your Power; for this Delay that I have desired, I confess it is a delay, but it is a delay very important for the Peace of the Kingdom; for it is not my person that I look on alone, it is the kingdom's welfare, and the kingdom's peace; it is an old Sentence, That we should think long, before we resolve of great matters. Therefore, Sir, I do say again, that I do put at your doors all the inconveniencecy of an hasty Sentence. I confess I have been here now, I think, this week; this day eight days was the day I came here first, but a little Delay of a day or two further may give Peace; whereas an hasty Judgment may bring on that trouble and perpetual inconveniencecy to the kingdom, that the child that is unborn may repent it: and therefore again, out of the duty I owe to God, and to my country, I do desire that I may be heard by the Lords and Commons in the Painted Chamber, or any other chamber that you will appoint me.

*Ld. President.* Sir, you have been already answered to what you even now moved, being the same you moved before, since the Resolution and the Judgment of the Court in it: and the Court now requires to know whether you have any more to say for yourself than you have said, before they proceed to Sentence?

*King.* I say this, Sir, That if you will hear me, if you will give but this Delay, I doubt not but I shall give some satisfaction to you all here, and to my People after that; and therefore I do require you, as you will answer it at the dreadful Day of Judgment, that you will consider it once again.

*Ld. President.* Sir, I have received direction from the Court.

*King.* Well, Sir.

*Ld. President.* If this must be re-enforced, or any thing of this nature, your Answer must be the same; and they will proceed to Sentence, if you have nothing more to say.

*King.* Sir, I have nothing more to say, but I shall desire, that this may be entered what I have said.

*Ld. President.* The Court then, Sir, hath something else to say to you; which, although I know it will be very unacceptable, yet notwithstanding they are willing, and are resolved to discharge their duty.—Sir, You speak very well of a precious thing, which you call Peace: and it had been much to be wished that God had put it into your heart, that you had as

effectually and really endeavoured and studied the Peace of the kingdom, as now in words you seem to pretend: but, as you were told the other day, actions must expound intentions; yet actions have been clean contrary. And truly, Sir, it doth appear plainly enough to them, that you have gone upon very erroneous principles: The kingdom hath felt it to their smart; and it will be no ease to you to think of it: for, Sir, you have held yourself, and let fall such language, as if you had been no way subject to the Law, or that the law had not been your superior. Sir, the Court is very sensible of it, and I hope so are all the understanding people of England, that the law is your superior; that you ought to have ruled according to the law; you ought to have done so. Sir, I know very well your pretence hath been that you have done so; but, Sir, the difference hath been who shall be the expositors of this law: Sir, whether you and your party, out of courts of justice, shall take upon them to expound law, or the courts of justice, who are the expounders? Nay, the Sovereign and the High Court of Justice, the Parliament of England, that are not only the highest expounders, but the sole makers of the law? Sir, for you to set yourself with your single judgment, and those that adhere unto you, to set yourself against the highest Court of Justice, that is not Law. Sir, as the Law is your Superior, so truly, Sir, there is something that is superior to the Law, and that is indeed the Parent or Author of the Law, and that is the people of England: for, Sir, as they are those that at the first (as other countries have done) did chuse to themselves this form of government even for Justice sake, that justice might be administered, that peace might be preserved; so, Sir, they gave laws to their governors, according to which they should govern: and if those laws should have proved inconvenient or prejudicial to the public, they had a power in them, and reserved to themselves, to alter as they shall see cause. Sir, it is very true what some of your side have said, '*Rex non habet parem in regno*,' say they: This Court will say the same, while King, that you have not your peer in some sense, for you are *major singulis*; but they will aver again that you are *minor universis*. And the same Author tells you, that '*non debet esse major eo in regno suo in exhibitione juris, minimus autem esse debet in judicio suscipiendo*.' [Bract. de leg. lib. 1. c. 8.]

This we know to be law, *Rex habet superiorem, Deum et legem, etiam et curiam*; so says the same author. And truly, Sir, he makes bold to go a little further, *Debent ei ponere frænum*: they ought to bridle him. And, Sir, we know very well the stories of old: those wars that were called the Barons' War, when the nobility of the land did stand out for the Liberty and Property of the Subject, and would not suffer the kings, that did invade, to play the tyrants freer, but called them to account for it; we know that truth, that they did *fræ-*

*num ponere*. But, Sir, if they do forbear to do their duty now, and are not so mindful of their own honour and the kingdom's good as the Barons of England of old were, certainly the Commons of England will not be unmindful of what is for their preservation, and for their safety; *Justitie fruendi causa reges constituti sunt*. This we learn: The end of having kings, or any other governors, it is for the enjoying of justice; that is the end. Now, Sir, if so be the king will go contrary to that end, or any other governor will go contrary to the end of his government; Sir, he must understand that he is but an officer in trust, and he ought to discharge that trust; and they are to take order for the animadversion and punishment of such an offending governor.

This is not law of yesterday, Sir, (since the time of the division betwixt you and your people) but it is law of old. And we know very well the Authors and the Authorities that do tell as what the law was in that point upon the Election of Kings, upon the Oath that they took unto their people: And if they did not observe it, there were those things called Parliaments; the Parliaments were they that were to adjudge (the very Words of the Author) the complaints and wrongs done of the king and the queen, or their children; such wrongs especially, when the people could have no where else any Remedy. Sir, that hath been the people of England's case: they could not have their Remedy elsewhere but in parliament.

Sir, Parliaments were ordained for that purpose, to redress the Grievances of the people; that was their main end. And truly, Sir, if so be that the kings of England had been rightly mindful of themselves, they were never more in majesty and state than in the Parliament: But how forgetful some have been, Stories have told us: we have a miserable, a lamentable, a sad experience of it. Sir, by the old laws of England, I speak these things the rather to you, because you were pleased to let fall the other day, You thought you had as much knowledge in the Law as most gentlemen in England: it is very well, Sir. And truly, Sir, it is very fit for the gentlemen of England to understand that Law under which they must live, and by which they must be governed. And then, Sir, the Scripture says, "They that know their master's will and do it not:" what follows? The Law is your master, the acts of parliament.

The Parliaments were to be kept antiently, we find in our old Author, twice in the year, that the Subject upon any occasion might have a ready Remedy and Redress for his Grievance. Afterwards, by several acts of parliament in the days of your predecessor Edward the third, they should have been once a year. Sir, what the Intermission of parliaments hath been in your time, it is very well known, and the sad consequences of it; and what in the interim instead of these Parliaments hath been by you by an high and arbitrary hand introduced upon the People, that likewise hath been too well

known and felt. But when God by his Providence had so far brought it about, that you could no longer decline the calling of a Parliament, Sir, yet it will appear what your ends were against the antient and your native kingdom of Scotland: the Parliament of England not serving your ends against them, you were pleased to dissolve it. Another great necessity occasioned the calling of this parliament; and what your Designs, and Plots, and Endeavours all along have been, for the crushing and confounding of this Parliament, hath been very notorious to the whole kingdom. And truly, Sir, in that you did strike at all; that had been a sure way to have brought about That that this Charge lays upon you, your intention to subvert the Fundamental Laws of the Land: for the great bulwark of the Liberties of the People is the Parliament of England; and to subvert and root up that, which your aim hath been to do, certainly at one blow you had confounded the Liberties and the Property of England.

Truly, Sir, it makes me to call to mind; I cannot forbear to express it; for, Sir, we must deal plainly with you, according to the merits of your cause; so is our Commission: it makes me call to mind (these proceedings of yours) That that we read of a great Roman Emperor, by the way let us call him a great Roman tyrant, Caligula, that wished that the people of Rome had had but one neck, that at one blow he might cut it off. And your proceedings have been somewhat like to this: for the body of the people of England hath been (and where else) represented but in the Parliament; and could you but have confounded that, you had at one blow cut off the neck of England. But God hath reserved better things for us, and hath pleased for to confound your designs, and to break your forces, and to bring your person into custody, that you might be responsible to justice.

Sir, we know very well that it is a question much on your side press'd, By what Precedent we shall proceed? Truly, Sir, for Precedents, I shall not upon these occasions institute any long discourse; but it is no new thing to cite precedents almost of all nations, where the people (when power hath been in their hands) have made bold to call their Kings to account; and where the change of government hath been upon occasion of the Tyranny and Misgovernment of those that have been placed over them, I will not spend time to mention either France, or Spain, or the Empire, or other countries; volumes may be written of it. But truly, Sir, that of the kingdom of Arragon, I shall think some of us have thought upon it, where they have the justice of Arragon, that is, a man, *tantum in medio positus*, betwixt the king of Spain and the people of the country; that if wrong be done by the king, he that is king of Arragon, the justice, hath power to reform the wrong; and he is acknowledged to be the king's superior, and is the grand preserver of their privileges, and hath prosecuted kings upon their miscarriages.

Sir, what the Tribunes of Rome were heretofore, and what the Ephori were to the Lacedemonian State, we know that is the Parliament of England to the English state: and though Rome seemed to lose its liberty when once the Emperors were; yet you shall find some famous acts of justice even done by the Senate of Rome; that great Tyrant of his time, Nero, condemned and judged by the Senate. But truly, Sir, to you I should not need to mention these foreign examples and stories: If you look but over Tweed, we find enough in your native kingdom of Scotland: If we look to your first King Fergus, that your Stories make mention of, he was an elective king; he died, and left two sons, both in their minority; the kingdom made choice of their uncle, his brother, to govern in the minority. Afterwards the elder brother, giving small hopes to the people that he would rule or govern well, seeking to supplant that good uncle of his that governed them justly, they set the elder aside, and took to the younger. Sir, if I should come to what your Stories make mention of, you know very well you are the hundred and ninth king of Scotland; for not to mention so many kings as that kingdom, according to their power and privilege, have made bold to deal withal, some to banish, and some to imprison, and some to put to death, it would be too long; and as one of your own authors says, it would be too long to recite the manifold examples that your own Stories make mention of. *Reges, &c.* (say they) we do create; we created kings at first: *Leges, &c.* we imposed laws upon them. And as they are chosen by the suffrages of the People at the first, so upon just occasion, by the same suffrages they may be taken down again. And we will be bold to say, that no kingdom hath yielded more plentiful experience than that your native kingdom of Scotland hath done concerning the Deposition and the Punishment of their offending and transgressing kings, &c.

It is not far to go for an example: near you Your grandmother set aside, and your father, an infant, crowned. And the State did it here in England: here hath not been a want of some examples. They have made bold (the Parliament and the People of England) to call their Kings to account: there are frequent examples of it in the Saxons' time, the time before the Conquest. Since the Conquest there want not some Precedents neither; King Edward the Second, King Richard the Second, were dealt with so by the Parliament, as they were deposed and deprived. And truly, Sir, whoever shall look into their Stories, they shall not find the Articles that are charged upon them to come near to that height and capitalness of Crimes that are laid to your Charge; nothing near.

Sir, you were pleased to say, the other day, wherein they dissent; and I did not contradict it. But take all together, Sir: If you were as the Charge speaks, and no otherwise, admitted king of England: but for that you were pleased

then to alledge, how that for almost a thousand years these things have been, Stories will tell you, if you go no higher than the time of the Conquest; if you do come down since the Conquest, you are the twenty-fourth king from William called the Conqueror, you shall find one half of them to come merely from the state, and not merely upon the point of descent. It were easy to be instanced to you; but time must not be lost that way. And truly, Sir, what a grave and learned Judge said in his time, and well known to you, and is since printed for posterity, That although there was such a thing as a descent many times, yet the kings of England ever held the greatest assurance of their Titles, when it was declared by Parliament. And, Sir, your Oath, the manner of your Coronation, doth shew plainly, that the kings of England, although it is true, by the law the next person in blood is designed; yet if there were just cause to refuse him, the People of England might do it. For there is a Contract and a Bargain made between the King and his People, and your Oath is taken: and certainly, Sir, the bond is reciprocal; for as you are the Liege Lord, so they Liege Subjects. And we know very well, that hath been so much spoken of, *Ligeantia est duplex*. This we know now, the one tie, the one bond, is the Bond of Protection that is due from the sovereign; the other is the Bond of Subjection that is due from the subject. Sir, if this bond be once broken, farewell sovereignty! *Subjectio trahit, &c.*

These things may not be denied, Sir: I speak it rather, and I pray God it may work upon your heart, that you may be sensible of your Miscarriages. For whether you have been, as by your office you ought to be, a Protector of England, or the Destroyer of England, let all England judge, or all the world, that hath look'd upon it. Sir, though you have it by inheritance in the way that is spoken of, yet it must not be denied that your office was an office of trust, and indeed an office of the highest trust lodged in any single person; For as you were the Grand Administrator of Justice, and others were, as your delegates, to see it done throughout your realms; if your greatest office were to do Justice, and preserve your People from wrong, and instead of doing that, you will be the great Wrong-doer yourself; if instead of being a Conservator of the Peace, you will be the grand Disturber of the Peace; surely this is contrary to your office, contrary to your trust. Now, Sir, if it be an office of inheritance, as you speak of, your Title by Descent, let all men know that great offices are seizable and forfeitable, as if you had it but for a year, and for your life. Therefore, Sir, it will concern you to take into your serious consideration your great Miscarriages in this kind. Truly, Sir, I shall not particularize the many Miscarriages of your reign whatsoever, they are famously known: It had been happy for the kingdom, and happy for you too, if it had not been so much known, and so much

felt, as the Story of your Miscarriages must needs be, and hath been already.

Sir, That which we are now upon, by the command of the highest Court, hath been and is to try and judge you for these great offences of your's. Sir, the Charge hath called you *Tyrant*, a *Traitor*, a *Murderer*, and a *Public Enemy* to the Commonwealth of England. Sir, it had been well if that any of all these terms might rightly and justly have been spared, if any one of them at all.

*King.* Ha!

*Ld. President.* Truly, Sir, We have been told, "*Rex est dum bene regit, Tyrannus qui populam opprimit.*" And if so be that be the definition of a *Tyrant*, then see how you come short of it in your actions, whether the highest *Tyrant*, by that way of arbitrary government, and that you have sought for to introduce, and that you have sought to put, you were putting upon the people? Whether that was not as high an Act of *Tyranny* as any of your predecessors were guilty of, nay, many degrees beyond it?

Sir, the term *Traitor* cannot be spared. We shall easily agree it must denote and suppose a Breach of Trust; and it must suppose it to be done to a superior. And therefore, Sir, as the people of England might have incurred that respecting you, if they had been truly guilty of it, as to the definition of law; so on the other side, when you did break your trust to the kingdom, you did break your trust to your superior: For the kingdom is that for which you were trusted.—And therefore, sir, for this breach of Trust when you are called to account, you are called to account by your superiors. "*Minimus ad majorem in judicium vocat.*" And, Sir, the People of England cannot be so far wanting to themselves, God having dealt so miraculously and gloriously for them: but that having power in their hands, and their great enemy, they must proceed to do justice to themselves and to you: For, Sir, the Court could heartily desire, that you would lay your hand upon your heart, and consider what you have done amiss, that you would endeavour to make your peace with God. Truly, Sir, these are your High-Crimes, Tyranny and Treason.

There is a third thing too, if those had not been, and that is *Murder*, which is laid to your charge. All the *bloody Murders*, which have been committed since this time that the division was betwixt you and your people, must be laid to your charge, which have been acted or committed in these late wars. Sir, it is an heinous and crying sin: And truly, Sir, if any man will ask us what Punishment is due to a Murderer, let God's Law, let man's law speak. Sir, I will presume that you are so well read in Scripture, as to know what God himself hath said concerning the shedding of man's blood: Gen. ix. Numb. xxxv. will tell you what the punishment is: And which this Court, in behalf of the whole kingdom, are sensible of, of that innocent blood that has been shed, whereby indeed the land stands still defiled with that

blood; and, as the text hath it, it can no way be cleansed but with the shedding of the Blood of him that shed this blood. Sir, we know no dispensation from this blood in that Commandment, 'Thou shalt do no Murder.' We do not know but that it extends to kings as well as to the meanest peasants, the meanest of the people; the command is universal. Sir, God's law forbids it; Man's law forbids it: Nor do we know that there is any manner of exception, not even in man's laws, for the punishment of murder in you. It is true, that in the case of kings every private hand was not to put forth itself to this work, for their reformation and punishment: But, Sir, the people represented having power in their hands, had there been but one wilful act of murder by you committed, had power to have convened you, and to have punished you for it.

But then, Sir, the weight that lies upon you in all those respects that have been spoken, by reason of your Tyranny, Treason, Breach of Trust, and the Murders that have been committed; surely, Sir, it must drive you into a sad consideration concerning your eternal condition. As I said at first, I know it cannot be pleasing to you to bear any such things as these are mentioned unto you from this Court, for so we do call ourselves, and justify ourselves to be a Court, and a high Court of Justice, authorized by the highest and solemnest court of the kingdom, as we have often said; And although you do yet endeavour what you may to discount us, yet we do take knowledge of ourselves to be such a Court as can administer Justice to you; and we are bound, Sir, in duty to do it. Sir, all I shall say before the reading of your Sentence, it is but this: The Court does heartily desire that you will seriously think of those evils that you stand guilty of. Sir, you said well to us the other day, you wished us to have God before our eyes. Truly, Sir, I hope all of us have so: That God, who we know is a King of Kings, and Lord of Lords; that God with whom there is no respect of Persons; that God, who is the Avenger of innocent Blood; We have that God before us; that God, who does bestow a curse upon them that withhold their hands from shedding of blood, which is in the case of guilty malefactors, and that do deserve death: That God we have before our eyes. And were it not that the conscience of our duty hath called us unto this place, and this employment, Sir, you should have had no appearance of a Court here. But, Sir, we must prefer the discharge of our duty unto God, and unto the kingdom, before any other respect whatsoever. And although at this time many of us, if not all of us, are severely threatened by some of your party, what they intend to do, Sir, we do here declare, That we shall not decline or forbear the doing of our duty in the administration of Justice, even to you, according to the merit of your Offence, although God should permit those men to effect all that bloody design in hand against us. Sir, we will say, and we will declare it, as those Children

in the fiery Furnace, that would not worship the golden Image that Nebuchadnezzar had set up, 'That their God was able to deliver them from that danger that they were near, unto:' But yet if he would not do it, yet notwithstanding that they would not fall down and worship the Image. We shall thus apply it; That though we should not be delivered from those bloody hands and hearts that conspire the overthrow of the kingdom in general, of us in particular, for acting in this great Work of Justice, though we should perish in the Work, yet by God's grace, and by God's strength, we will go on with it. And this is all our resolutions. Sir, I say for yourself, we do heartily wish and desire that God would be pleased to give you a sense of your sins, that you would see wherein you have done amiss, that you may cry unto him, that God would deliver you from Blood-guiltiness. A good king was once guilty of that particular thing, and was clear otherwise, saving in the matter of Uriah. Truly, Sir, the Story tells us that he was a repentant king; and it signifies enough, that he had died for it, but that God was pleased to accept of him, and to give him his pardon, 'Thou shalt not die, but the child shall die: Thou hast given cause to the enemies of God to blaspheme.'

*King.* I would desire only one word before you give Sentence; and that is, that you would hear me concerning those great Imputations that you have laid to my charge:

*Ld. President.* Sir, You must give me now leave to go on; for I am not far from your Sentence, and your time is now past.

*King.* But I shall desire you will bear me a few words to you: For truly, whatever Sentence you will put upon me in respect of those heavy imputations, that I see by your Speech you have put upon me; Sir, It is very true, that—

*Ld. President.* Sir, I must put you in mind: Truly, Sir, I would not willingly, at this time especially, interrupt you in any thing you have to say, that is proper for us to admit of; but, Sir, you have not owned us as a Court, and you look upon us as a sort of people met together; and we know what language we receive from your party.

*King.* I know nothing of that.

*Ld. President.* You disavow us as a Court; and therefore for you to address yourself to us, not acknowledging us as a Court to judge of what you say, it is not to be permitted. And the truth is, all along, from the first time you were pleased to disavow and disown us, the Court needed not to have heard you one word: For unless they be acknowledged a Court, and engaged, it is not proper for you to speak. Sir, we have given you too much liberty already, and admitted of too much delay, and we may not admit of any farther. Were it proper for us to do it, we should hear you freely; and we should not have declined to bear you at large, what you could have said or proved on your behalf, whether for totally excusing, or for in part excusing those great and heinous

Charges, that in whole or in part are laid upon you. But, Sir, I shall trouble you no longer; your sins are of so large a dimension, that if you do but seriously think of them, they will drive you to a sad consideration of it, and they may improve in you a sad and serious repentance: And that the Court doth heartily wish that you may be so penitent for what you have done amiss, that God may have mercy, at leastwise, upon your better part: Truly, Sir, for the other, it is our parts and duties to do that, which the law prescribes. We are not here *judicare* but *judicare*. We cannot be unmindful of what the Scripture tells us; "For to acquit the Guilty is of equal Abomination, as to condemn the Innocent." We may not acquit the Guilty. What sentence the law affirms to a Traitor, Tyrant, a Murderer, and a public Enemy to the Country, that Sentence you are now to hear read unto you; and that is the Sentence of the Court.

The Lord President commands the Sentence to be read: make an O yes, and command Silence while the Sentence is read.

O yes made: Silence commanded.

The Clerk read the Sentence, which was drawn up in Parliament:

"Whereas the Commons of England in Parliament had appointed them an High Court of Justice, for the Trying of Charles Stuart, King of England, before whom he had been three times convened; and at the first time a Charge of High-Treason, and other Crimes and Misdemeanors, was read in the behalf of the Kingdom of England," &c. [Here the Clerk read the Charge.] "Which Charge being read unto him, as aforesaid, he the said Charles Stuart was required to give his Answer: But he refused so to do; and so expressed the several Passages of his Trial in refusing to answer.—For all which Treasons and Crimes this Court doth adjudge, That the said Charles Stuart, as a Tyrant, Traitor, Murderer, and a Public Enemy, shall be put to Death, by the severing his Head from his Body."

After the Sentence read, the Lord President said, This Sentence now read and published, is the Act, Sentence, Judgment, and Resolution of the whole Court.

Here the Court stood up, as assenting to what the President said.

*King.* Will you hear me a word, Sir?

*Ld. President.* Sir, you are not to be heard after the Sentence.

*King.* No, Sir!

*Ld. President.* No, Sir; by your favour, Sir. Guard, withdraw you Prisoner.

*King.* I may speak after the Sentence—  
By your Favour, Sir, I may Speak after the Sentence ever.

By your Favour, (Hold!) the Sentence, Sir—

I say, Sir, I do—

I am not suffered for to speak: Expect what Justice other People will have.

O yes: All manner of Persons that have any thing else to do, are to depart at this time, and to give their attendance in the Painted Chamber; to which place this Court doth forthwith adjourn itself.

Then the Court rose, and the King went with his guard to sir Robert Cotton's, and from thence to Whitehall.

*The Speech Cook designed to have delivered if the King had pleaded.*

May it please your Lordship; my Lord President, and this high court, erected for the most comprehensive, impartial, and glorious piece of justice, that ever was acted and executed upon the theatre of England, for the trying and judging of Charles Stuart, whom God in his Wrath gave to be a King to this Nation, and will, I trust, in great love, for his notorious prevarications and blood-guiltiness, take him away from us: He that hath been the original of all injustice, and the principal author of more mischiefs to the free-born people of this nation, than the best arithmetician can well enumerate, stands now to give an account of his stewardship, and to receive the good of justice, for all the evil of his injustice and cruelty. Had he ten thousand lives, they could not all satisfy for the numerous, horrid, and barbarous massacres of myriads and legions of innocent persons, which by his commands, commissions and procurements, (or at least all the world must needs say, which he might have prevented; and he that suffers any man to be killed, when he may save his life without danger of his own, is a murderer), have been cruelly slain, and inhumanly murdered, in this renowned Albion: Anglia hath been made an Akeldama, and her younger sister Ireland a land of ire and misery. And yet this hard-hearted man, as he went out of the Court down the stairs, January 22, said (as some of his guard told me and others), 'That he was not troubled for any of the blood that hath been shed, but for the blood of one man' (peradventure he meant Strafford). He was no more affected with a List that was brought into Oxford of five or six thousand slain at Edgehill, than to read one of Ben. Jonson's Tragedies. You Gentlemen Royalists that fought for him, if ye had lost your lives for his sake, you see he would have no more pitied you, by his own confession, than you do a poor worm: and yet what heart but would cleave, if it were a rock; melt, if it were ice; break, if it were adamant; or dissolve, if it were a diamond: to consider that so much precious Protestant blood should be shed in these three Kingdoms, so many gallant, valiant men of all sorts and conditions to be sacrificed and lost

their lives, and many of them to die so desperately in regard of their eternal conditions; and all this merely and only for the satisfying and fulfilling of one man's sinful lust and wicked will? A good shepherd is he that lays down his life, or ventures it to save the sheep; but for one to be so proudly wedded to his own conceits, as so maliciously to oppose his private opinion against the public judgment and reason of state, and to make head against the Parliament, who acknowledged him to be head thereof, so far as to give him the honour of the royal assent, in settling the Militia and safety of the people: I say, for a protestant prince, so beloved at home, and feared abroad, that in love and by gentle means might have had any thing from the Parliament; for him to occasion the shedding of so much blood for a pretended Prerogative, as hereafter will appear, nothing in effect but to fix and perpetuate an absolute tyranny; I can say no less, 'But O Lucifer, from whence art thou fallen?' and what heretics are they in politics, that would have had such a man to live! Much more, that think his actions to have merited love and praise from heaven and earth. But now to dissect the Charge.

I. That the kings of England are trusted with a limited Power to govern by law, the whole stream and current of legal Authorities run so limped and clear, that I should but weary those that know it already, and trouble those that need not know the particular Cases; for it is one of the fundamentals of law, That the king is not above the law, but the law above the king. I could easily deraign it from 1 Edw. 3. to the Jurisdiction of Courts, That the king has no more power or authority, than what by law is concredited and committed to him: but the most famous Authority is Fortescue, Chancellor to Henry 6, (and therefore undoubtedly would not clip his master's Prerogative) who most judiciously takes a difference between a Government wholly regal and seignoral, as in Turkey, Russia, France, Spain, &c. and a government politick and mixed, where the law keeps the beam even between sovereignty and subjection, as in England, Denmark, Sweden, and Poland. The first, where the edict of a prince makes the law resemble an impetuous inundation of the waters, whereby the corn and hay, and other fruits of the earth are spoiled, as when it is midwinter at Midsommer; the latter is like a sweet smooth stream, running by the pleasant fields and meadows. That by the law of England the king ought not to impose any thing upon the people, or take any thing away from them to the value of a farthing, but by common consent in Parliaments or National Meetings; and that the people of common right, and by several statutes, ought to have parliaments yearly, or oftener if need be, for the redress of public Grievances, and for the enacting of good and wholesome laws, and repealing of old statutes of *Oneri* which are prejudicial to the nation: And that the king hath not by law so much

power as a Justice of Peace, to commit any man to prison for any offence whatsoever, because all such matters were committed to proper courts and officers of justice: And if the king by his verbal command send for any person to come before him, if the party refused to attend, and the messenger endeavouring to force him, they fell to blows; if the messenger killed the party sent for, this by the law is murder in him; but if he killed the messenger, this was justifiable in him, being in his own defence, so as to sue forth a pardon of course: These, and many other Cases of like nature, are so clear and well known, that I will not presume to multiply particulars.

That the King took an Oath at his Coronation to preserve the peace of the nation, to do justice to all, and to keep and observe the laws which the people have, himself confesses: [1st Book of Ord. fol.] And it was charged upon the late Archbishop, that he emasculated the oath, and left out very material words; 'Which the people shall chuse:' which certainly he durst not have done, without the king's special command. And it seems to me no light presumption, that from that very day he had a design to alter and subvert the fundamental laws, and to introduce an arbitrary and tyrannical government. But though there had been no Oath, yet by special office and duty of his place every king of England is obliged to act for the people's good: for all power, as it is originally in the People (he must needs be extreme ignorant, malicious, or a self-destroyer, that shall deny it), so it is given forth for their preservation, nothing for their destruction. For a king to rule by lust, and not by law, is a creature that was never of God's making, not of God's approbation, but his permission: and though such men are said to be Gods on earth, it is in no other sense than the Devil is called the God of this World. It seems that one Passage which the king would have offered to the Court, (which was not permitted him to dispute the Supreme Authority in the nation; and standing mute, the Charge being for High Treason, it is a conviction in law) was, That 1 Sam. viii. is a copy of the King's Commission; by virtue whereof, he as king might rule and govern as he list; that he might take the people's sons, and appoint them for himself, for his chariots, and to be his horsemen, and take their daughters to be his confectionaries, and take their fields, and vineyards, and olive-yards, even the best of them, and their goodliest young men, and their asses, and give them to his officers, and to his servants; which indeed is a copy and pattern of an absolute Tyrant and absolute Slaves, where the people have no more than the Tyrant will afford them. The Holy Spirit in that Chapter does not insinuate what a good king ought to do, but what a wicked king would presume to do. Besides, Saul and David had extraordinary calling, but all just power is now derived from and conferred by the people: yet in the case of Saul it is observable, That the people, out of pride to be like other nations,

desired a king, and such a king as the Heathens had, which were all tyrants: for they that know any thing in History, know that the first four monarchs were all Tyrants at first, till they gained the people's consent. Nimrod the great Hunter was Ninus that built Ninveh, the first Tyrant and Conqueror that had no Title; and so were all kingdoms, which are not elective, till the people's subsequent consent; and tho' it be by Descent, yet it is a continuation of a Conquest; till the people consent and voluntarily submit to a government, they are but slaves, and in reason they may free themselves if they can. In France the king begins his reign from the day of his Coronation: The Archbishop asks the people, if he shall be king; the twelve peers, or some that personate them, say, Yes: They girt the sword about him, then he swears to defend the laws. And is any thing more natural than to keep an oath? And though virtuous kings have prevailed with the people to make their crowns hereditary, yet the Coronation shews the shell that the kernel hath been in. Samuel was a good Judge, and there was nothing could be objected against him, therefore God was displeased at their inordinate desire of a king; and it seems to me, that the Lord declares his dislike of all such kings as the Heathens were, that is, kings with an unlimited power, that are not tied to laws; for he gave them a king in his wrath, therein dealing with them as the wise physician with the distempered and impatient patient, who desiring to drink wine, tells him the danger of inflammation; yet wine he will have, and the physician considering a little wine will do but little hurt, rather than his patient by fretting should take greater hurt, prescribes a little white-wine: wherein the physician doth not approve his drinking of wine, but of two evils chuseth the least. The Jews would have a King for majesty and splendor, like the Heathens: God permits this, he approves it not: it seems to me, that the Lord renounces the very genus of such kings as are there mentioned, and the old word 'Conning,' by contraction 'King,' does not signify power or force to do what he will, but a knowing, wise, discreet man, that opens the people's eyes, and does not lead them by the noses, but governs them with wisdom and discretion for their own good. Therefore, Gentlemen-Royalists, be not so mad as to misconstrue either the Oaths of Allegiance or Supremacy, or any League or Covenant, that any man should swear to give any one leave to cut his throat: The true meaning is, that the king of England was supreme in this land, in opposition to the Pope, or any other prince or potentate, as the words of the oath do import, 'That no foreign State, Prince, or Potentate,' &c. In case of any foreign Invasion, the king was by law to be Generalissimo, to command the people for their own safety; and so it was expounded by the Parliament in 13 Eliz. which for some reason of state was not permitted to be printed with the Statutes. Besides, God told those kings whom he had for-

merly anointed, what their duty was; not to exalt themselves overmuch above their brethren, to delight themselves in the law of God: Out of which I infer, that the Turks, Tartars, Muscovites, French, Spaniards, and all people that live at the beck and nod of tyrannical men, may and ought to free themselves from that tyranny, if, and when, they can; for such Tyrants that so domineer with a rod of iron, do not govern by God's permissive hand of approbation or benediction, but by the permissive hand of his Providence, suffering them to scourge the people, for ends best known to himself, until he open a way for the people to work out their own enfranchisements.

But before I speak of the War, it will be necessary for the satisfaction of rational men, to open and prove the King's wicked Design, wherewith he stands charged. Now, that he had from the beginning of his reign such a Design and Endeavour so to tear up the Foundations of Government, that Law should be no protection to any man's person or estate, will clearly appear by what follows.

1. By his not taking the Oath so fully as his predecessors did, that so when the Parliament should tender good laws to him for the royal assent, he might readily answer that he was not by Oath obliged to confirm or corroborate the same.

2. By his dishonourable and perfidious dealing with the People at his Coronation, when he set forth a Proclamation, That in regard of the Infection then spread through the kingdom, he promised to dispense with those knights, that by an old statute were to attend at the Coronation, who were thereby required not to attend; but did notwithstanding within a few months after take advantage of their absence, and raised a vast sum of money out of their estates at the Council-Table; where they pleading the said Proclamation for their justification, they were answered that the Law of the Land was above any Proclamation; like that Tyrant, that when he could not by law execute a virgin, commanded her to be deflowered, and then put to death.

3. By his altering the Patents and Commissions to the Judges, which having heretofore had their places granted to them so long as they should behave themselves well therein, he made them but during pleasure; that if so the Judges should not declare the Law to be as he would have it, he might with a wet finger remove them, and put in such as should, not only say, but swear, if need were, That the Law was as the king would have it. For when a man shall give 5 or 10,000*l.* for a Judge's Place, during the king's pleasure, and he shall the next day send to him to know his opinion of a difference in law between the King and Subject; and it shall be intimated unto him, That if he do not deliver his Opinion for the king, he is likely to be removed out of his place the next day; which if so, he knows not how to live, but must rot in a prison for the money which he borrowed to buy his Place; as was

well known to be some of their cases, who under-hand, and closely bought great places, to elude the danger of the statute; whether this was not too heavy a temptation for the shoulders of most men to bear, is no hard matter to determine. So as upon the matter, that very act of his made the king at the least a potential tyrant; for when that shall be law which a king shall declare himself, or which shall be declared by those whom he chooses, this brings the people to the very next step to slavery.

But that which doth irrefragably prove the Design, was his restless desire to destroy Parliaments, or to make them useless: And for that, who knows not but that there were three or four National Meetings in Parliament in the first four years of his reign, which were called for Supply, to bring Money into his coffers, in point of Subsidies, rather than for any benefit to the people, as may appear by the few good laws that were then made? But that which is most memorable, is the untimely dissolving of the Parliament in 4 Car. when sir John Elliot and others, who managed a Conference with the house of peers concerning the duke of Buckingham, who, amongst other things, was charged concerning the Death of king James, were committed close prisoners to the Tower, where he lost his life by cruel indurance; which I may not pass over without a special animadversion: for sure there is no Turk or Heathen but will say, that if he were any way guilty of his father's death, let him die for it.

I would not willingly be so injurious to the honest Reader, as to make him buy that again which he hath formerly met with in the Parliament's Declaration or elsewhere; in such a case a marginal reference may be sufficient. Nor would I herein be so presumptuous as to prevent any thing that happily may be intended in any Declaration for more general satisfaction; but humbly to offer a student's mite, which satisfies myself, with submission to better judgments.

How the King first came to the crown, God and his own conscience best knew. It was well known and observed at court, that a little before he was a professed enemy to the duke of Buckingham; but instantly upon the death of king James, took him into such special protection, grace and favour, that upon the matter he divided the kingdom with him. And when the earl of Bristol had exhibited a Charge against the said duke, the 13th Article whereof concerned the Death of king James, he instantly dissolved that parliament, that so he might protect the Duke from the justice thereof, and would never suffer any legal enquiry to be made for his father's death. The Rabbins observe, that That which stuck most with Abraham about God's command to sacrifice Isaac, was this: 'Can I not be obedient, unless I be unnatural? What will the Heathen say, when they hear I have killed my only son?' What will an Indian say to this case? A king hath all power in his hand to do jus-

tice: There is one accused upon strong presumptions, at the least, for poisoning that king's father; the king protects him from justice; whether do you believe that himself had any hand in his father's death? Had the duke been accused for the death of a beggar, he ought not to have protected him from a judicial trial. We know that by law it is no less than Misprison of Treason to conceal a treason; and to conceal a murder, strongly implies a guilt thereof, and makes him a kind of accessory to the fact. He that hath no nature to do justice to his own Father, could it ever be expected that he should do justice to others? Was he fit to continue a Father to the people, who was without natural affection to his own Father? Will he love a kingdom, that shewed no love to himself, unless it was, that he durst not suffer inquisition to be made for it? But I leave it as a riddle, which at the Day of Judgment will be expounded and unriddled; for some sins will not be made manifest till that day, with this only, That had he made the 'Law of God his delight, and studied therein 'night and day,' as God commanded his kings to do; or had he but studied Scripture half so much as Ben. Johnson or Shakespear, he might have learnt, That when Amazia was settled in the kingdom, he suddenly did justice upon those servants which had killed his father Josiah: [2 Kings xii. 20. and xiv. 1, 5.] he did not by any pretended prerogative excuse or protect them, but delivered them up into the hands of that Justice which the horridness of the fact did undoubtedly demerit\*.

That parliament (4 Car.) proving so abortive, the king sets forth a Proclamation, That none should presume to move him to call Parliaments, for he knew how to raise Monies enough without the help of Parliaments; therefore in twelve years refuseth to call any. In which interval and intermission, how he had oppressed the people by Incroachments and usurpations upon their Liberties and Properties; and what vast sums of Money he had forcibly exacted and exhausted by illegal Patents and Monopolies of all sorts, I refer the Reader to that most judicious and full Declaration of the State of the kingdom, published in the beginning of this parliament. That Judgment of Ship-money did, upon the matter, formalize the people absolute slaves, and him an absolute Tyrant: For if the king may take from the people, in case of necessity, and himself shall be Judge of that necessity, then cannot any man say that he is worth sixpence, for if the king say that he hath need of that sixpence, then by law he must have it. I mean that great Nimrod, that would have made all England a forest; and the people, which the bishop calls his sheep, to be his venison to be hunted at his pleasure.

\* See the Case of the Duke of Buckingham, Earl of Bristol, and Lord Conway, A. D. 1626. Ante. Vol. 2. p. 1267, and the Note in p. 1330 of that volume.

Nor does the common Objection, "That the Judges and evil Counsellors, and not the king, ought to be responsible for such Mal-Administrations, injustice and oppression," bear the weight of a feather in the balance of right reason. For, 1st, Who made such wicked and corrupt Judges? Were they not his own creatures? And ought not every man to be accountable for the works of his own hands? He that does not hinder the doing of Evil, if it lies in his power to prevent it, is guilty of it as a commander thereof. He that suffered those black Stars to inflict such barbarous cruelties, and unward-of punishments, as Brandings, Slitting of Noses, &c. upon honest men, to the dishonour of the Protestant religion, and disgrace of the Image of God shining in the face of man, he well deserved to have been so served. But, 2dly, he had the benefit of those illegal Fines and Judgments. I agree, that if a Judge shall oppress I. S. for the benefit of I. D. the king ought not to answer for this, but the Judge, unless he protect the Judge against the complaint of I. S. and in that case he makes himself guilty of it. But when an unjust Judgment is given against I. S. for the king's benefit, and the Fine to come immediately into his coffers; he that receives the money must needs be presumed to consent to the judgment. But, 3dly, mark a Machiavel-policy; "call no parliaments to question the injustice and corruption of Judges for the people's relief; and make your own Judges, and let that be the law that they declare; whether it be reasonable or unreasonable, it is no matter."

But, then, how came it to pass that we had any more Parliaments? Had we not a gracious king to call a parliament when there was so much need of it, and to pass so many gracious acts to put down the Star-Chamber, &c.? Nothing less; it was not any voluntary free act of Grace, nor the least ingredient or mixture of love or good affection to the people, that called the short parliament in 1640, but to serve his own turn against the Scots, whom he then had designed to enslave: and those seven Acts of Grace which the king passed, were no more than his duty to do, nor half so much, but giving the people a taste of their own grists; and he dissents with them about the Militia, which commanded all the rest; he never intended thereby any more good and security to the people, than he that stealing the goose leaves the feathers behind him. But to answer the question, thus it was:

The King being wholly given up to be led by the counsels of a Jesuited Party, who endeavoured to throw a bone of dissention among us, that they might cast in their net into our troubled waters, and catch more fish: For St. Peter's See persuaded the king to set up a new Form of Prayer in Scotland, and laid the bait so cunningly, that whether they saw it or not, they were undone: If they saw the Mystery of Iniquity couched in it, they would resist, and so merit punishment for re-

bellling; if they swallowed it, it would make way for worse. Well, they saw the poison, and refused to taste it. The King makes war, and many that loved honour and wealth more than God, assisted him; down he went with an army, but his treasure wasted in a short time; fight they would not, for fear of an after-reckoning. Some commanders propound, that they should make their demands; and the king grants all, comes back to London, and burns the Pacification, saying, it was counterfeit; They reassemble their forces, he raises a second War against them, and was necessitated to call a parliament, offering to lay down Ship-Money for twelve Subsidies. They refuse; the King in high displeasure breaks off the Parliament, and in a Declaration commands them not to think of any more Parliaments, for he would never call another.

There was a king of Egypt that cruelly oppressed the people; they, poor slaves! complaining to one another, he feared a rising, and commanded that none should complain upon pain of cruel death. Spies being abroad, they often met, but durst not speak, but parted with tears in their eyes; which declared that they had more to utter, but durst not: This struck him to greater fears, he commanded that none should look upon one another's eyes at parting; therefore their griefs being too great to be smothered, they fetched a deep sigh when they parted, which moved them so much to compassionate one another's wrongs, that they ran in and killed the Tyrant. The long hatching Irish Treason was now ripe, and therefore it was necessary that England and Scotland should be in combustion, lest we might help the Irish protestants. Well, the Scots get Newcastle; he knew they would trust him no more, he had so often broke with them, therefore no hopes to get them out by a Treaty. Many lords and the City petition for a Parliament; the king was at such a necessity, that yield he must to that which he most abhorred; God had brought him to such a strait. He that a few months before assumed the power of God, commanding men not to think of Parliaments, to restrain the free thoughts of the heart of man, was constrained to call one, which they knew he would break off when the Scots were sent home; therefore got a confirmation of it, that he should not dissolve it without the consent of both Houses, of which he had no hopes, or by force, which he suddenly attempted; and the English Army in the North, was to have come up to confound the Parliament and this rebellious and distoyal City, as the king called it; and for their pains was promised thirty thousand pounds and the plunder, as by the Examinations of colonel Goring, Legg, &c. doth most fully appear,

And here by the way, I cannot but commend the City Malignants; he calls them Rebels, they call him a gracious King: He, by his Proclamation at Oxford, prohibits all Commerce and intercourse of Trade between this populous City (the life and interest whereof consists

in Trade, without which many thousands cannot subsist) and other parts of the kingdom: still they do good against evil, and petitioning him so often to cut their throats, are troubled at nothing so much as that they are not reduced to that former and a worse bondage than when there was a Lord Warden [Darling-rub] made in the City, and the King sent for as much of their estates as he pleased. But surely the Oxfordshire men are more to be commended; for when the King had commanded by his Proclamation, [15 April, 20 Car.] that what corn, hay, and other provision in the county of Oxford, could not be fetched into the said city for his garrison, should be consumed and destroyed by fire, for fear it should fall into the hands of the Parliament's Friends; (a cruelty not to be paralleled by any Infidel, Heathen, or Pagan King; nor to be preceded amongst the most avowed and professed enemies, much less from a king to his subjects) they resolved never to trust him any more.

But the great Question will be, What hath been the true Ground and Occasion of the War? which unless I clear, and put it out of question, as the Charge imports, I shall fall short of what I chiefly aim at, viz. "That the King set up his Standard of War, for the advancement and upholding of his personal Interest, Power, and pretended Prerogative, against the public interest of common right, peace and safety:" and thus I prove it.

1. He fought for the Militia by sea and land, to have it at his absolute disposal, and to justify and maintain his illegal Commissions of Array; and this he pretended was his birthright by the law of England: which if it were so, then might he by the same reason command all the Money in the kingdom; for he that carries the sword, will command the purse.

2. The next thing that he pretended to fight for, was his power to call Parliaments when he pleased, and dissolve them when he list; if they will serve his turn, then they may sit by a law to enslave the people; so that the people had better chuse all the Courtiers and King's Favourites at first, than to trouble themselves with ludicrous Elections, to assemble the Freeholders together, to their great labour and expence both of time and coin; and those which are chosen knights and burgesses, to make great preparations, to take long journies to London themselves and their attendants, to see the kings and lords in their Parliament robes ride in state to the House, and with Domitian, to catch flies. And no sooner shall there be any breathings, or a spirit of justice stirring and discovered in the House of Commons, but the king sends the black rod, and dissolves the Parliament, and sends them back again as wise as they were before, but not with so much Money in their purses, to tell stories to the Freeholders of the bravery of the king and lords.

3. Well, but if this be too gross, and that the people begin to murmur and clamour for another Parliament, then there goes out ano-

ther Summons, and they meet, and sit for some time, but to as much purpose as before; for when the Commons have presented any Bill for Redress of a public Grievance, then the king hath several games to play to make all fruitless: As, first, his own negative voice, that if Lords and Commons are both agreed, then he will advise; which (I know not by what strange doctrine) hath been of late construed to be a plain denial: though under favour, at the first it was no more but to allow him two or three days time to consider of the equity of the law; in which time if he could not convince them of the injustice of it, then ought he by his oath and by law to consent to it.

4. But if by this means the King had contracted hard thoughts from the people, and that not only the Commons, but many of the Lords, that have the same noble blood running in their veins, as those English Barons, whose swords were the chief instruments that purchased Magna Charta; then, that the king might be sure to put some others between him and the people's hatred, the next prerogative that he pretended to have, was to be the sole Judge of Chivalry, to have the sole power of conferring Honours, to make as many lords as he pleased, that so he might be sure to have two against one, it the House of Commons (by reason of the multitude of burgessees, which he likewise pretended a power to make as many borough towns and corporations as he pleased) were not packed also. And this is that glorious privilege of the English Parliaments, so much admired for just nothing: For if this pretended prerogative might stand for law, as was challenged by his Adherents, never was there a purer cheat put upon any people, nor a more ready way to enslave them, than by privilege of Parliament; being just such a mockery of the people, as that Mock Parliament at Oxford was, where the king's consent must be the figure, and the representative stand for a cypher.

5. But then out of Parliament the people are made to believe, that the king hath committed all justice to the Judges, and distributed the execution thereof into several courts; and that the king cannot so much as imprison a man, or impose any thing upon, nor take any thing away from the people, as by law he ought not to do: But now see what Prerogative he challenges.

1. If the king have a mind to have any public-spirited man removed out of the way, this man is killed, the murderer known; a letter comes to the Judge, and it may be, it shall be found but manslaughter; if it be found murder, the man is condemned, but the king grants him a pardon, which the Judges will allow, if the word 'Murder' be in it: But because it is too gross to pardon murder, therefore the king shall grant him a lease of his life for seven years, and then renew it (like a Bishop's lease), as he did to major Prichard, who was lately justified: who being a servant to the earl of Lindsey, murdered a gentleman in Lincolnshire, and was

condemned, and had a lease of his life from the king, as his own friends have credibly told me.

2. For matter of Liberty: the king or any courtier sends a man to prison; if the Judge set him at liberty, then put him out of his place; a temptation too heavy for those that love money and honour more than God, to bear: therefore any judgment that is given between the king and a subject, it is not worth a rush: for what will not money do?

Next, he challenges a Prerogative to enhance and debase Monies, which by law was allowed him, so far as to balance Trade, and no further; that if gold went high beyond sea, it might not be cheap here, to have it all bought up and transported: but under colour of that, he challenges a Prerogative, That the king may by proclamation make leather current, or make a sixpence go for 20s. or 20s. for a sixpence. Which not to mention any thing of the project of Farthings or Brass money, he that challenges such a prerogative, is a potential tyrant: for if he may make my twelve-pence in my pocket worth but two-pence, what property hath any man in any thing that he enjoys?

Another Prerogative pretended was, That the king may avoid any Grant; and so may cozen and cheat any man by a law. The ground whereof is, That the King's Grants shall be taken according to his intention; which, in a sober sense, I wish that all men's grants might be so construed according to their intentions, expressed by word or writing: but by this means, it being hard to know what the king intended, his Grants have been like the Devil's Oracles, taken in any contrary sense for his own advantage.

1 *Rep.* In the famous Case of Altonwood there is vouched the lord Lovel's case: That the king granted lands to the lord Lovel, and his heirs males, not for service done, but for a valuable consideration of money paid. The Patentee well hoped to have enjoyed the land not only during his life, but that his heirs males, at least of his body, should have likewise enjoyed it: but the Judges finding, it seems, that the king was willing to keep the money, and have his land again, (for what other reason, no mortal man can fathom) resolved that it was a void Grant, and that nothing passed to the patentee. I might instance in many cases of like nature, throughout all the Reports. As one once made his boast, That he never made or past any patent or charter from the crown, but he reserved one starting hole or other, and knew how to avoid it; and so merely to cozen and defraud the poor patentee. So that now put all these Prerogatives together, 1. The Militia by sea and land: 2. A liberty to call Parliaments when he pleased; and to adjourn, prorogue, or dissolve them at pleasure: 3. A negative Voice, that the People cannot save themselves without him, and must cut their own throats, if commanded so to do: 4. The Nomination and Making of all the Judges, that upon peril of the loss of their places must declare

the law to be as he pleases: 5. A power to confer Honours upon whom, and how he pleases; a covetous base wretch for five or ten thousand pounds to be courted, who deserves to be carted: 6. To pardon Murderers, whom the Lord says shall not be pardoned: 7. To set a value and price of Monies as he pleases; that if he be to pay ten thousand pounds, he may make Leather by his Proclamation to be current that day, or 5s. to pass for 20s.; and if to receive so much, 20s. to pass for 5s.: And lastly, a legal Theft to avoid his own Grants: I may boldly throw the gauntlet, and challenge all the Machiavels in the world to invent such an exquisite platform of tyrannical domination, and such a perfect tyranny, without maim or blemish, as this is, and that by a law, which is worst of all. But the truth is, these are no legal prerogatives, but usurpations, incroachments, and invasions upon the people's rights and liberties: and this easily effected, without any great depth of policy; for it is but being sure to call no Parliaments, or make them useless, and make the Judges places profitable, and place avarice upon the bench, and no doubt but the law shall sound as the king would have it. But let me thus far satisfy the ingenuous Reader, That all the Judges in England cannot make one case to be law that is not reason, no more than they can prove a hair to be white that is black; which if they should so declare or adjudge, it is a mere nullity: For law must be reason adjudged, where reason is the *Genus*; and the judgment in some court makes the *Differentia*. And I never found that the fair hand of the Common Law of England ever reached out any prerogative to the king above the meanest man, but in three cases; 1. In matters of Honour and Preeminence to his person; and in matters of Interest: That he should have Mines Royal of Gold and Silver, in whose land soever they were discovered; and fishes royal, as sturgeons and whales, in whose streams or water soever they were taken, which very rarely happened: or to have tithes out of a parish that nobody else could challenge: For says the Law, 'The most noble persons are to have the most noble things.' 2. To have his Patents freed from deceit, that he be not over-reached or cozened in his Contracts, being employed about the great and arduous affairs of the kingdom. 3. His Rights to be freed from incursion of time, not to be bound up by any Statute of Non-claim: for indeed possession is a vain plea, when the matter of right is in question; for right can never die: and some such honourable privileges of mending his plea, or suing in what court he will; and some such prerogatives, of a middle indifferent nature, that could not be prejudicial to the people. But that the law of England should give the king any such vast, immense, precipitating power, or any such God-like state, That he ought not to be accountable for wicked actions, or misadministrations and misgovernment, as he hath challenged and averred in his Answer to the

Petition of Right, or any such principles of Tyranny; which are as inconsistent with the people's liberties and safety as the Ark and Dagon, light and darkness, in an extensive degree; is a most vain and irrational thing to imagine. And yet that was the ground of the War, as himself often declared; and that would not have half contented him, if he had come in by the sword. But some rational men object, How can it be Murder, say they, for the king to raise Forces against the Parliament, since there is no other way of determining differences between the king and his subjects, but by the sword? For the Law is no competent judge between two supreme powers; and then if it be only a contending for each other's right, where is the malice that makes the killing of a man murder? Take the Answer thus: first, How is it possible to imagine two supreme powers in one nation, no more than two suns in one firmament? If the king be supreme, the parliament must be subordinate: if they supreme, then he subordinate. But then it is alledged, That the king challenged a power only co-ordinate, that the parliament could do nothing without him, nor he without them. Under favour, two powers co-ordinate is as absurd as the other: for though in quiet times the Commons have waited upon the king, and allowed him a negative voice in matters of less concernment, where delay could not prove dangerous to the people; yet when the Commons shall vote that the kingdom is in danger, unless the Militia be so and so settled; now if he will not agree to it, they are bound in duty to do it themselves. And it is impossible to imagine that ever any man should have the consent of the people to be their king upon other conditions (without which no man ever had right to wear the diadem): for conquest makes a title amongst wolves and bears, but not amongst men.

When the first Agreement was concerning the Power of Parliaments, if the king should have said, Gentlemen, are you content to allow me any negative voice, that if you vote the kingdom to be in danger, unless such an Act pass, if I refuse to assent, shall nothing be done in that case? Surely no rational man but would have answered, May it please your majesty, we shall use all dutiful means to procure your royal assent: but if you still refuse, we must not sit still, and see ourselves ruined: we must and will save ourselves, whether you will or no. And will any man say that the king's power is diminished, because he cannot hurt the people? Or that a man is less in health that hath many physicians to attend him? God is omnipotent, that cannot sin; and all power is for the People's good: but a prince may not say, That is for the people's good, which they see and feel to be for their hurt. And as for the malice, the law implies that; as when a thief sets upon a man to rob him, he hath no spite to the man, but love to the money: but it is an implied malice, that he will kill the people unless they will be slaves.

Q. But by what Law is the King condemned?

Resp. By the Fundamental Law of this kingdom, by the general law of all nations, and the unanimous consent of all rational men in the world, written in every man's heart with the pen of a diamond in capital letters, and a character so legible, that he that runs may read, viz. That when any man is intrusted with the sword for the protection and preservation of the people, if this man shall employ it to their destruction, which was put into his hand for their safety, by the law of that land he becomes an enemy to that people, and deserves the most exemplary and severe punishment that can be invented. And this is the first necessary fundamental law of every kingdom, which by intrinsical rules of government must preserve itself. And this law needed not be expressed, That if a king become a tyrant, he shall die for it; it is so naturally implied. We do not use to make laws which are for the preservation of nature; that a man should eat and drink, and buy himself clothes, and enjoy other natural comforts: No kingdom ever made any laws for it. And as we are to defend ourselves naturally without any written law, from hunger and cold, so from outward violence. Therefore, if a King would destroy a people, it is absurd and ridiculous to ask by what law he is to die. And this Law of Nature is the law of God, written in the fleshly tables of men's hearts; that, like the elder sister, hath a prerogative right of power before any positive law whatsoever: and this law of nature is an undubitable legislative authority of itself, that hath a suspensive power over all human laws. If any man shall by express covenant, under hand and seal, give power to another man to kill him, this is a void contract, being destructive to humanity.\* And by the law of England any act or agreement against the laws of God or nature is a mere nullity: for as man hath no hand in the making of the laws of God or nature, no more hath he power to make or alter them. If the pilot of a ship be drunk, and running upon a rock; if the passengers cannot otherwise prevent it, they may throw him into the sea to cool him. And this Question hath received Resolution this parliament. When the Militia of an Army is committed to a general, it is not with any express condition, that he shall not turn the mouths of his cannons against his own soldiers; for that is so naturally and necessarily implied, that it is needless to be expressed; inasmuch, as if he did attempt or command such a thing against the nature of his trust and place, it did *ipso facto* estate the Army in a right of disobedience; unless any man be so grossly ignorant, to think that obedience binds men to cut their own throats, or their companions. Nor is this any secret of the law which hath lain hid from the beginning, and now brought out to bring him to justice; but that which is connatural with every man, and innate in his judgment

\* Com. E. Leicester's Case.

and reason, and is as antient as the first king, and an epidemical binding law in all nations in the world: for when many families agree, for the preservation of human society, to invest any king or governor with power and authority; upon the acceptance thereof, there is a mutual trust and confidence between them, that the king shall improve his power for their good, and make it his work to procure their safeties, and they to provide for his honour; which is done to the commonwealth in him, as the Sword and Emblems of honour carried before the Lord Mayor, are for the honour of the City. Now, as when any one of this people shall compass the death of the governor, ruling well, this is a treason punishable with death, for the wrong done to the community, and Anathema be to such a man; so when he or they that are trusted to fight the People's Battles, and to procure their welfare, shall prevaricate, and act to the enslaving or destroying of the people, who are his Liege Lords, and all governors are but the people's creatures, and the work of their hands, to be accountable as their stewards, (and is it not senseless for the Vessel to ask the Potter by what law he calls it to account?) this is High Treason with a witness, and far more transcendent than in the former case; because the king was paid for his service, and the dignity of the person does increase the offence. For a great man of noble education and knowledge to betray so great a trust, and abuse so much love as the Parliament shewed to the King, by petitioning him as good subjects, praying him as good Christians, advising him as good counsellors, and treating with him as the Great Council of the kingdom, with such infinite care and tenderness of his honour (a course which God's People did not take with Rehoboam; they never petitioned him, but advised him; he refused their counsel, and hearkened to young counsellors, and they cry, "To thy tents, O Israel;" and make quick and short work of it); after all this, and much more longanimity and patience, which God exercises towards man to bring him to repentance, from the lord to the servant, for him not only to set up a standard of war, in defiance of his dread sovereign the People (for so they truly were in nature, though names have befooled us), but to persist so many years in such cruel persecutions; who with the word of his mouth might have made a peace: If ever there were so superlative a Treason, let the Indians judge. And whosoever shall break and violate such a trust and confidence, Anathema Maranatha be unto them.

*Q.* But why was there not a written Law to make it Treason for the King to destroy the People, as well as for a man to compass the King's Death?

*Resp.* Because our ancestors did never imagine, that any king of England would have been so desperately mad, as to levy a War against the Parliament and People; as in the common instance of parricide, the Romans

made no law against him that should kill his father, thinking no child would be so unnatural to be the death of him who was the author of his life; but when a child came to be accused for murder, there was a more cruel punishment inflicted than for other homicides; for he was thrown into the sea in a great leather barrel, with a dog, a jackanapes, a cock, and a viper, significant companions for him, to be deprived of all the elements, as in my "*Poor Man's Case*," fol. 10. Nor was there any law made against parents who should kill their children; yet if any man was so unnatural, he had an exemplary punishment.

*Obj.* But is it not a Maxim in law, That the King can do no Wrong?

*Resp.* For any man to say so, is blasphemy against the great God of Truth and Love: for only God cannot err; because what he wills is right, because he wills it. And it is a sad thing to consider how learned men, for unworthy ends, should use such art to subdue the people, by transportation of their senses, as to make them believe that the law is, That the King can do no Wrong.

First, for Law; I do aver it with confidence, but in all humility, that there is no such case to be found in law, That if the King rob, or murder, or commit such horrid extravagancies, that it is no Wrong. Indeed the case is put in Hen. 7, by a Chief Judge, "That if the King kill a man, it is no felony, to make him suffer death;" that is, to be meant in ordinary courts of justice. But there is no doubt but the parliament might try the king, or appoint others to judge him for it. We find cases in law, that the king hath been sued even in civil actions.—In 43 Edw. 3, 22, it is resolved, That all manner of actions did lie against the King, as against any lord; and 24 Edw. 3, 23, Wilby a learned Judge said, That there was a Writ *Præcipe Henrico Regi Anglie*.—Indeed Ed. 1. did make an Act of State, That men should sue to him by Petition; but this was not agreed unto in Parliament: Thelwal. tit. Roye. Digest of Writs, 71. But after, when Judges Plures grew great, the Judges and Bitesheeps began to sing lullaby, and spake *Placencia* to the king, that "my lord the King is an Angel of light:" now angels are not responsible to men, but God, therefore not kings; and the Judges, they begin to make the king a god, and say, That by law his stile is "*Sacred Majesty*," though he swears every hour; and "*Gracious Majesty*," though gracious men be the chief objects of his hatred; and that the king hath an omnipotence and an omnipresence.

But I am sure there is no case in law, That if the King levy a War against the Parliament and People, that it is not Treason. Possibly that case in Hen. 7. may prove, That if the king should in his passion kill a man, this shall not be felony to take away the king's life; for the inconvenience may be greater to the people, by putting a king to death for one offence and miscarriage, than the execution of justice

upon him can advantage them. But what's this to a levying of War against a Parliament? Never any Judge was so devoid of understanding, that he denied that to be Treason. But suppose a judge that held his place at the king's pleasure did so, I am sure never any parliament said so. But what if there had in dark times of Popery been an act made, That the king might murder, ravish, burn, and perpetuate all mischiefs, and play reaks with impunity; will any man that hath but wit enough to measure an ell of cloth, or to tell twenty, say, That this is an obligation for men to stand still, and suffer a monster to cut their throats, and grant commission to rob at Shuter's-hill; as such and no better are all legal thefts and oppressions? The Doctor says, That a Statute against giving an alms to a poor man is void: He is no Student, I mean, was never bound apprentice to reason, that says, A King cannot commit Treason against the People.

*Obj.* But are there not Negative Words in the Statute of 25 Edw. 3, That nothing else shall be construed to be Treason but what is there expressed?

*Resp.* That Statute was intended for the People's safety, that the King's Judges should not make traitors by the dozens, to gratify the king or courtiers; but it was never meant, to give liberty to the king to destroy the people: and though it be said, that the king and parliament only may declare Treason, yet no doubt if the king will neglect his duty, it may be so declared without him; for when many are obliged to do any service, if some of them fail, the rest must do it.

*Obj.* But is there any Precedent, that ever any man was put to death that did not offend against some written law? For where there is no law, there is no transgression.

*Resp.* It is very true, where there is neither law of God, nor nature, nor positive law, there can be no transgression; and therefore that Scripture is much abused, to apply it only to laws positive. For,

1. *Ad ea quæ frequentius, &c.* It is out of the sphere of all earthly law-givers to comprehend and express all particular cases that may possibly happen, but such as are of most frequent concurrence; particulars being different, like the several faces of men different from one another, else Laws would be too tedious: and as particulars occur, rational men will reduce them to general Reasons of State, so as every thing may be adjudged for the good of the community.

2. The law of England is *Lex non Scripta*, and we have a direction in the Epistle to the 3 Rep. That when our Law-Books are silent, we must repair to the Law of Nature and Reason. Hollingshead and other historians tells us, That in 20 H. 8, the lord Hungerford was executed for buggery, for which there was then no positive law to make it felony: and before any statute against Witchcraft, many Witches have been hanged in England, because it is death by God's law. If any Italian mountebank should

come over hither, and give any man poison that should lie in his body above a year and a day, and then kill him, as it is reported they can give a man poison that shall consume the body in three years: will any make scruple or question to hang up such a rascal? At Naples, the great Treasurer of corn being intrusted with many thousand quarters at three shillings the bushel, for the common good, finding an opportunity to sell it for five shillings the bushel to foreign merchants, enriched himself exceedingly thereby; and corn growing suddenly dear, the Council called him to account for it, who proffered to allow three shillings for it, as it was delivered into his cust dy, and hoped thereby to escape: but for so great a breach of trust, nothing would content the people but to have him hanged; and though there was no positive law for it, to make it Treason, yet it was resolved by the best politicians, that it was Treason to break so great a trust by the fundamental constitution of the kingdom, and that for so great an offence he ought to die, that durst presume to enrich himself by that which might endanger the lives of so many citizens; for as Society is so natural, so governors must of necessity and in all reason provide for the preservation and sustenance of the meanest member, be that is but as the little Toe of the Body Politic.

But concerning Ireland, where there were no less than 150,000 men, women, and children, most barbarously and satanically murdered in the first 4 months of the Rebellion, as appeared by substantial proofs, at the King's Bench, at the Trial of Macguire\*: if the king had a hand, or but a little-finger in that Massacre, every man will say, Let him die the death: But how shall we be assured of that? How can we know the tree better than by it's fruits? For my own particular, I have spent many serious thoughts about it, and I desire in doubtful cases to give Charity the upper hand; but I cannot in my conscience acquit him of it. Many strong presumptions, and several oaths of honest men, that have seen the king's Commission for it, cannot but amount to a clear proof. If I meet a man running down stairs with a bloody sword in his hand, and find a man stabbed in the chamber; though I did not see this man run into the body by that man which I met, yet if I were of the Jury, I durst not but find him guilty of the murder; and I cannot but admire that any man should deny that for him, which he durst never deny for himself. How often was that monstrous Rebellion laid in his dish! and yet he durst never absolutely deny it. Never was bear so unwillingly brought to the stake, as he was to declare against the Rebels; and when he did once call them Rebels, he would suffer but forty Copies to be printed, and those to be sent to him sealed: And he hath since above forty times called them his Subjects, and his good Subjects; and sent to Ormond to give

\* See p. 654.

special thanks to some of these Rebels, as Muskerry and Plunket (which I am confident, by what I see of his height of spirit and undaunted resolution at his Trial and since, acting the last part answerable to the former part of his life; he would rather have lost his life, than to have sent Thanks to two such incarnate devils, if he had not been as guilty as themselves). Questionless if the king had not been guilty of that blood, he would have made a thousand Declarations against these Blood-hounds and Hell-hounds, that are not to be named but with fire and brimstone, and have sent to all princes in the world for assistance against such accursed devils in the shape of men: But he durst not offend those Fiends and Firebrands; for if he had, I verily believe they would soon have produced his Commission under his hand and seal of Scotland at Edinburgh, 1641, a copy whereof is in the Parliament's hands, attested by Oath, dispersed by copies in Ireland, which caused the general rebellion.

*Obj.* He did not give Commission to kill the English, but to take their Forts, Castles, Towns, and Arms, and come over and help him.

*Resp.* And is it like all this could be effected without the slaughter of the poor English? Did the king ever call them Rebels, but in forty Proclamations wrung out of him by force, by the Parliament's importunity? Murdering the Protestants was so acceptable to him! And with this limitation, That none should be published without his further directions, as appears under Nichol's hand, now in the Parliament's Custody. But the Scots were proclaimed rebels before they had killed a man, or had an army, and a Prayer against them enjoined in all Churches; but no such matter against the Irish.

Well, when the Rebels were worsted in Ireland, the king makes war here to protect them, which but for his fair words had been prevented; often calling God to witness, he would as soon raise war on his own children: And men from Popish principles assist him. Well! we fought in jest, and were kept between winning and losing; The king must not be too strong, lest he revenge himself; nor the Parliament too strong, for the Commons would rule all; till Naseby fight, that then the king could keep no more days of Thanksgiving so well as we, then he makes a Cessation in Ireland, and many Irish came over to help him: English came over with Papists, who had scarce wiped their swords since they had killed their wives and children, and had their estates.

But thus I argue; The Rebels knew that the king had proclaimed them Traitors, and forty Copies were printed; and the first Clause of an Oath enjoined by the General Council of Rebels, was, "To bear true faith and allegiance to king Charles, and by all means to maintain his royal prerogative, against the Puritans in the Parliament of England." Now, is any man so weak in his intellectuals, as to

imagine, that if the Rebels had without the king's command or consent murdered so many Protestants, and he thereupon had really proclaimed them rebels, that they would after this have taken a new oath to have maintained his prerogative? No; those bloody devils had more wit than to fight in jest. If the king had once in good earnest proclaimed them rebels, they would have burnt their scabbards, and would not have stiled themselves the king's and queen's army, as they did. And truly, that which the king said for himself, That he would have adventured himself to have gone in person into Ireland to suppress that Rebellion, is but a poor argument to enforce any man's belief, that he was not guilty of the Massacre; For it makes me rather think, that he had some hopes to have returned at the head of 20 or 30,000 Rebels to have destroyed this nation. For when the earl of Leicester was sent by the Parliament to subdue the Rebels, did not the king hinder him from going? And were not the clothes and provisions which were sent by the Parliament for the relief of the poor Protestants there, seized upon by his command, and his men of war; and sold or exchanged for arms and ammunition to destroy this Parliament? And does not every man know, that the Rebels in Ireland gave Letters of Mart for taking the Parliament's ships, but freed the king's, as their very good friends? And I have often heard it credibly reported, that the king should say, That nothing more troubled him, but that there was not as much Protestant blood running in England and Scotland, as in Ireland. And when that horrid Rebellion begun to break forth, how did the Papists here triumph and boast, that they hoped ere long to see London Streets run down in blood? And yet I do not think, that the king was a Papist, or that he designed to introduce the Pope's Supremacy in spiritual things into this kingdom; But thus it was; A Jesuitical party at court was too prevalent in his counsels, and some mungril Protestants, that less hated the Papists than the Puritans, by the queen's mediation joined all together to destroy the Puritans; hoping that the Papists and the Laodicean Protestants would agree well enough together. And lastly, if it be said, that if the King and the Rebels were never fallen out, what need had Ormond to make a Pacification or Peace with them by the king's commission under the great seal of Ireland? Truly there hath been so much Daubing, and so little Plain-dealing, that I wonder how there comes to be so many beggars.

Concerning the betraying of Rochel, to the invading of the protestant party in France, I confess I heard so much of it, and was so shamefully reproached for it in Geneva, and by the Protestant Ministers in France, that I could believe no less than that the king was guilty of it. I have heard fearful exclamations from the French Protestants against the King and the late Duke of Buckingham, for the betraying of Rochel. And some of the minis-

ters told me ten years since, That God would be revenged of the wicked King of England for betraying Rochel. And I have often heard Deodati say, concerning Henry IV. of France, That the Papists had his body, but the Protestants had his heart and soul; but for the king of England, the Protestants had his body, but the Papists had his heart: Not that I think he did believe Transubstantiation, but I verily believe, that he loved a Papist better than a Puritan.

The Duke of Roan, who was an honest gallant man, and the King's godfather, would often say, That all the blood which was shed in Dauphine would be cast upon the king of England's score. For thus it was: The King sent a letter to the Rochellers by sir William Beecher, to assure them, That he would assist them to the uttermost against the French King, for the liberty of their religion; conditionally, That they would not make any peace without him: And Montague was sent into Savoy, and to the d. of Roan, to assure them from the King, That 30,000 men should be sent out of England, to assist them against the French King, in three fleets; one to land in the isle of Rhee, a second in the river of Bourdeaux, and a third in Normandy. Whereupon the duke of Roan being general for the Protestants, not suspecting that the French durst assault him in Dauphine (because the King of England was ready to invade him as he had promised), drew out his army upon disadvantage: Whereupon the French King employed all his army into Dauphine against the Protestants, who were forced to retreat, and the duke of Roan to fly to Geneva, and the Protestants to accept of peace upon very hard conditions, to stand barely at the King's devotion for their liberties, without any cautionary towns of assurance, as formerly they had; being such a peace as the sheep make with the wolves, when the dogs are dismissed. And the Protestants have ever since cried out to this very day, It is not the French King that did us wrong, for then we could have borne it; but it was the King of England, a professed Protestant, that betrayed us. And when I have many times intreated Deodati and others to have a good opinion of the King, he would answer me, That we are commanded to forgive our enemies, but not to forgive our friends.

There is a French book printed about two years since, called "*Memoires du Monsieur de Roan*;" where the King's horrid perfidiousness, and deep dissimulation, is very clearly unfolded and discovered. To instance but in some particulars: The King having solemnly engaged to the Rochellers, that he would hazard all the forces he had in his three Kingdoms, rather than they should perish; did, in order thereunto, to gain credulity with them, send out eight ships to sea, commanded by sir John Pennington, to assist the Rochellers, as was pretended, but nothing less intended; for Pennington assisted the French King against the Rochellers, which made sir Ferdinando Gorge to go away with the Great Neptune, in detestation of so damn-

able a plot: And the English masters and owners of ships refusing to lend their ships to destroy the Rochellers, whom with their souls they desired to relieve, Pennington in a mad spite shot at them.

Soubise being Agent here in England for the French Protestants, acquainted the King how basely Pennington had dealt, and that the English ships had mowed down the Rochel ships like grass, not only to the great danger and loss of the Rochellers, but to the eternal dishonour of this nation, scandal of our religion, and disadvantage of the general affairs of all the Protestants in Christendom. The King seems to be displeased, and says, What a Knave is this Pennington! But whether it was not feigned, let all the world judge. But the thing being so plain, said Soubise to the king, Sir, why did the English ships assist the French King, and those that would not were shot at by your Admiral? The French Protestants are no fools; how can I make them believe that you intend their Welfare? The King was much put to it for a ready answer, but at last thus it was patched up; that the French King had a design to be revenged of Genoa for some former affront, and that the King lent him eight English ships to be employed for Genoa; and that sailing towards Genoa, they met with some of the Rochellers accidentally, and that the English did but look on and could not help it, not having any commission to fight at that present: Wherein the Rochellers might and would have declined a sea-fight, if they had not expected our assistance. But still the poor Protestants were willing rather to blame Pennington than the King; who in great seeming zeal, being surety for the last peace between the French King and his Protestant subjects, sends Devick to the duke of Roan, to assure him, That if Rochel were not speedily set at liberty (which the French King had besieged, contrary to his agreement), he would employ his whole strength, and in his own person see it performed. Which being not done, then the King sends the Duke of Buckingham to the Isle of Rhée, and gives new hopes of better success to Soubise; commanding the admiral and officers in the fleet, in Soubise's hearing, to do nothing without his advice. But when the duke came to land at the Isle of Rhée, many gallant Englishmen lost their lives, and the duke brought back 300 tons of corn from the Rochellers, which he had borrowed of them, pretending a necessity for the Englishmen, which was but feigned, knowing it was a city impregnable, so long as they had provision within. I confess the Rochellers were not wise, to lend the duke their corn, considering how they had been dealt with. But what a base thing was it so to betray them, and to swear unto them, That they should have corn enough sent from England, before they wanted it! And for a long time, God did miraculously send them in a new kind of fish, which they never had before. But when the Duke came to Court, he made the honest English believe, that Rochel would suddenly be relieved, and that

there was not the least danger of the loss of it : but secretary Cook, an honest understanding gentleman, and the only friend at Court to the Rochellers, labouring to improve his power to send some succour to Rochel, was suddenly sent away from court upon some sleeveless errand, as some say to Portsmouth, under colour of providing corn for Rochel: But the Duke soon after went thither, and said, His life upon it, Rochel is safe enough. And the next day, Soubise being at Portsmouth, he pressed the Duke of Buckingham most importunately to send relief to Rochel then or never. The Duke told him, that he had just then heard good news of the victualling of Rochel, which he was going to tell the king : which Soubise making doubt of, the Duke affirmed it by an oath; and having the words in his mouth, he was stabbed by Felton, and instantly died.\* The poor Rochellers seeing themselves so betrayed, exclaimed of the English, and were constrained through famine to surrender the city; yet new assurances came from the king to the duke of Roan, that he should never be abandoned, and that he should not be dismayed nor astonished for the loss of Rochel.

But Soubise spoke his mind freely at court, that the English had betrayed Rochel, and that the loss of that city was the apparent perdition and loss of 32 places of strength from the French protestants in Languedoc, Piedmont, and Dauphine: therefore it was thought fit that he should have a fig given him to stop his mouth. Well, not long after, two capuchins were sent into England to kill honest Soubise, and the one of them discovered the other. Soubise rewarded the discoverer, and demanded justice here against the other, who was a prisoner; but by what means you may easily imagine, that assassinate rascal, instead of being whipt, or receiving some more severe punishment, was released, and sent back into France with money in his purse: and one of the messengers that was sent from Rochel to complain of those abominable treacheries, was taken here; and, as the duke of Roan writes, was hanged for some pretended felony or treason: And much more to this purpose may be found in the duke of Roan's memorials. But yet I know many wise, sober, men do acquit the king from the guilt of the loss of Rochel, and lay it upon the duke, as if it were but a loss of his reputation. They say the duke of Buckingham agitated his affairs neither for religion, nor the honour of his master; but only to satisfy his passion in certain foolish vows which he made in France, entered upon a war: and that the business miscarried through ignorance, and for want of understanding to manage so difficult a negotiation, he being unfit to be an admiral or a general.

I confess that for many years I was of that opinion, and thought that the king was seduced by evil counsel; and some thought that Buckingham and others ruled him as a child, and durst do what they list: but certainly he was

too politic and subtle a man to be swayed by any thing but his own judgment. Since Naseby Letters, I ever thought him principal in all transactions of state, and the wisest about him but accessaries: he never acted by any implicit faith in state matters: the proudest of them all durst never cross him in any design, when he had once resolved upon it. If any man so soft-brained to think that the duke or Pennington durst betray Rochel without his command? Would not he have hanged them up at their return, if they had wilfully transgressed his commands? A thousand such excuses made for him, are but like Irish quagmires that have no solid ground or foundation in reason: he was well known to be a great student in his younger days, that his father would say, He must make him a bishop. He had more learning and dexterity in state affairs undoubtedly, than all the kings in Christendom: If he had had grace answerable to his strong parts, he had been another Solomon: but his wit and knowledge proved like a sword in a madman's hand; he was a stranger to the work of grace and the spirit of God: and all those meanders in state, his serpentine turnings and windings, have but brought him to shame and confusion. But I am fully satisfied none of his counsel durst ever advise him to any thing, but what they knew before he resolved to have done; and that they durst as well take a bear by the tooth, as do, or consent to the doing of any thing, but what they knew would please him; they did but hew and square the timber, he was the master builder that gave the form to every architecture: and being so able and judicious to discern of every man's merits, never think that the duke or Pennington, or any judge or officer, did ever any thing for his advantage without his command, against law or honour.

Upon all which premises, may it please your lordship, I do humbly demand and pray the justice of this High Court; and yet not I, but the innocent blood that hath been shed in these three kingdoms, demands justice against him: This blood is vocal, and cries aloud, and yet speaks no better, but much louder than the blood of Abel; for what proportion hath the blood of that righteous man to the blood of so many thousand? If king Ahab and queen Jezebel, for the blood of one righteous Naboth, (who would not sell his inheritance for the full value) were justly put to death; what punishment doth he deserve, that is guilty of the blood of thousands, and sought for a pretended prerogative, that he might have any man's estate that he liked, without paying for it? This blood hath long cried, How long, Parliament, how long, Army, will ye forbear to avenge our blood? Will ye not do justice upon the capital author of all injustice? When will ye take the proud lion by the beard, that defies you with impetuous exultations? What is the House of Commons? What is the Army? As Pharaoh said, "Who is the Lord? And who is Moses?" I am not accountable to any power on earth; those that were murdered at Brentford, knocked on

\* See No. 133, vol. 3, p. 367.

the head in the water, and those honest souls that were killed in cold blood at Bolton and Liverpool in Lancashire, at Bartomly in Cheshire, and many other places, their blood cries night and day for justice against him; their wives and their children cry, Justice upon the Murderer, or else give us our fathers and husbands again: Nay, should the people be silent, the very stones and timber of the houses would cry for justice against him. But, my lord, before I pray Judgment, I humbly crave leave to speak to two particulars:

1. Concerning the Prisoner. When I consider what he was, and how many prayers have been made for him, though I know that all the world cannot restore him nor save his life, because God will not forgive his temporal punishment; yet if God in him will be pleased to add one example more to the church of his unchangeable love to his elect in Christ, not knowing but that he may belong to the election of grace; I am troubled in my spirit, in regard of his eternal condition, for fear that he should depart this life without love and reconciliation to all those saints whom he hath scorned under the notion of presbyterians, anabaptists, independents and sectaries. It cannot be denied, but that he hath spent all his days in unmeasurable pride; that during his whole reign he hath deputed himself as a God, been depended upon, and adored as God; that he hath challenged and assumed an omnipotent power, an earthly omnipotence, that with the breath of his mouth hath dissolved parliaments; his *non placet* hath made all the counsels of that supreme court to become abortives. *Non curo* hath been his motto, who instead of being honoured as good kings ought to be, and no more, hath been idolized and adored, as our good God only ought to be. A man that hath shot all his arrows against the upright in the land, hated Christ in his members, swallowed down unrighteousness, as the ox drinks water; esteemed the needy as his foot-stool, crushed honest public-spirited men, and grieved when he could not afflict the honest more than he did; counted it the best art and policy to suppress the righteous, and to give way to his courtiers so to gripe, grind, oppress and overreach the free people of the land, that he might do what he list (the remembrance whereof would pierce his soul, if he knew the preciousness of it); but all sins to an infinite mercy are equally pardonable: therefore my prayer for this poor wretch shall be, That God would so give him repentance to life, that he may believe in that Christ, whom he hath imprisoned, persecuted, and murdered in the saints; that he which hath lived a tyrant, and hated nothing so much as holiness; may die a convert, and in love to the saints in England; that so the tears of the oppressed and the afflicted may not be as so many fiery stinging serpents, causing an eternal despairing, continual horror to this miserable man, when all tyrants shall be astonished, and innocent blood will affright more than twelve legions of devils. All the

hurt that I wish to him, is, that he may look the saints in the face with comfort; for the saints must judge the world: and however it may be, he or his adherents may think it a brave Roman spirit, not to repent of any thing, nor express any sorrow for any sin, though never so horrid, taking more care and fear not to change their countenance upon the scaffold, than what shall become of them after death; yet I beseech your lordship, that I may tell him and all the malignants now living, out this: Charles Stuart, unless you depart this life in love and reconciliation to all those saints and godly men, whom you have either ignorantly or maliciously opposed, mocked, and persecuted, and still scorn and jeer at, as heretics and sectaries, there is no more hopes for you ever to see God in comfort, than for me to touch the Heavens with my finger, or with a word to annihilate this great building, or for the Devil to be saved; which he might be, if he could love a saint as such. No, Sir; it will be too late for you to say to those saints, whom you have defied, Give me some of your holiness, that I may behold God's angry countenance: you can expect no answer, but "Go buy, Sir," of those soul-hucksters, your bishops, which fed you with chaff and poison; and now you must feed upon fire and brimstone to all eternity.

2. Concerning myself, I bear no more malice to the man's person, than I do to my dear father; but I hate that cursed principle of Tyranny, that has so long lodged and harboured within him, which has turned our waters of law into blood. And therefore, upon that malignant principle, I hope this High-Court (which is an habitation of justice, and a royal palace of principles of freedom) will do speedy justice; that this lion which has devoured so many sheep, may not only be removed out of the way, but that this iron scepter, which has been lifted to break this poor nation in pieces like a potter's vessel, may be wrested out of the hands of tyrants: that my honourable clients (for whom I am an unworthy advocate) the people of England, may not only taste, but drink abundantly of those sweet waters of that well of liberty, which this renowned Army hath digged with their swords, which was stopped by the Philistines, the fierce Jew, and uncircumcised Canaanite; the hopes whereof made me readily hearken to the call to this service, as if it had been immediately from heaven, being fully satisfied that the prisoner was long since condemned to die by God's law (which being more noble and ancient than any law of man, if there had been a statute that he should not die, yet he ought to be put to death notwithstanding); and that this High Court was but to pronounce the sentence and judgment written against him. And though I might have been sufficiently discouraged, in respect that my reason is far less than others of my profession; yet considering that there are but two things desirable, to make a dumb man eloquent; namely a good cause, and good

judges; the first whereof procures the justice of heaven, and the second justice upon earth: and thinking that happily God might make use of one mean man at the bar, amongst other learned counsel, that more of his mind might appear in it (for many times the less there is of man, the more God's glory does appear; and hitherto very much of the mind of God hath appeared in this action), I went as cheerfully about it as to a wedding. And that the glory of this administration may be wholly given to God, I desire to observe, to the praise of his great name, the work of God upon my own spirit in his gracious assistance and presence with me, as a return of prayer, and fruit of faith; believing that God never calls to the acting of any thing so pleasing to him, as this most excellent court of justice is, but he is present with the honourable judges, and those that wait upon them. I have been sometimes of counsel against felons and prisoners, but I never moved the court to proceed to judgment against any felon, or to keep any man in prison, but I trembled at it in my thoughts, as thinking it would be easier to give an account of mercy and indulgence, than of any thing that might look like rigour: but now my spirits are quite of another temper, and I hope it is meat and drink to good men, to have justice

done; and recreation to think what benefit this nation will receive by it.

And now, my Lord, I must, as the truth is, conclude him guilty of more transcendent Treasons, and enormous crimes, than all the kings in this part of the world have ever been. And as he that would picture Venus, must take the eyes of one, the cheeks of another beautiful woman, and so other parts, to make a complete beauty; so to delineate an absolute tyrant, the cruelty of Richard the third, and all the subtlety, treachery, deep dissimulation, abominable projects and dishonourable shifts that ever were separately in any that swayed the English sceptre, conspired together to make their habitation in this whited wall. Therefore I humbly pray, That as he has made himself a precedent in committing such horrid acts, which former kings and ages knew not, and have been afraid to think of, that your lordships and this High-Court, out of your sublime wisdoms, and for justice-sake, would make him an example for other kingdoms for the time to come, that the kings of the earth may hear and fear, and do no more so wickedly; that he, which would not be a pattern of virtue, and example of justice in his life, may be a precedent of justice to others by his death.\*

**The JOURNAL of the High-Court of Justice, for the TRIAL of King CHARLES THE FIRST, as it was read in the House of Commons, and attested under the Hand of PHELPS, Clerk to that Court; with additions by J. NALSON, LL. D.**

An Act of the Commons of England, assembled in Parliament, for erecting of a High Court of Justice, for the trying and judging of Charles Stuart, King of England.

“Whereas it is notorious, That Charles Stuart, the now king of England, not content

\* This Speech Cook afterwards published, with the following Title and Preface:

“King Charles's Case: or, An Appeal to all rational Men, concerning his Trial in the High Court of Justice. Being, for the most part, that which was intended to have been delivered at the Bar, if the King had pleaded to the Charge, and put himself upon a fair Trial. With an additional Opinion, concerning the Death of King James, the loss of Rochel, and the Blood of Ireland. By John Cook, of Gray's Inn, Barrister.

Justice is an excellent virtue:  
Reason is the life of the law.  
Womanish pity to mourn for a tyrant,  
Is a deceitful cruelty to a city.

“To the Reader.

“The Righteous Judge, whose judgment is not only inevitable, but infallible, must shortly

with those many encroachments which his predecessors had made upon the people in their rights and freedoms, hath had a wicked design totally to subvert the antient and fundamental laws and liberties of this nation, and in their place to introduce an arbitrary and tyrannical government; and that besides all other evil ways and means to bring this design to pass, he hath prosecuted it with fire and sword, levied

judge me, and all that concurred to bring the capital delinquent to condign punishment; but, in the interim, I desire to be judged by all understanding men in the world, that suffer their judgments to be swayed by reason, and not biassed by private interest, whether ever any man did so much deserve to die. Cain, for the murder of one righteous Abel, and David, for one Uriah, had been men of death, had not God pardoned them. Those thirty-one kings, which Joshua hanged up, and Saul's seven sons, which were but at the worst (as it seems to me) evil counsellors, were they not innocent, nay saints, in comparison of this man? Those that crucified Christ did it ignorantly; for, had they known him, they had not crucified the Lord of glory. The saints, under the ten persecutions, suffered by the hands of the heathens; the Sicilian vespers, the Parisian massacre of the Protestants, and the Gun-Powder

and maintained a cruel war in the land, against the parliament and kingdom, whereby the country hath been miserably wasted, the public treasure exhausted, trade decayed, thou-

Plot, were acted and intended by Papists, out of a conceit of merit. But for a Protestant prince, styled 'The Defender of the Faith,' in a time of light, that had sworn to keep the peace, received tribute to that end, and might have had the very hearts of the people, if they could have given him them without death, (the strongest engagement;) I say, for such a one so long to persecute the faithful, destroy and enslave the people by oppressing cruelties; and when Machiavel could not do it, to levy a war to that wicked end, which never any of his ancestors durst attempt; that might at any time with a word of his mouth have stopt all the bleeding veins in the three kingdoms, but would not; and, for the satisfying of a base lust, caused more protestant blood to be shed than ever was spilt, either by Rome heathen or antichristian: blessed God, what ugly sins lodge in their bosoms, that would have had this man to live! But words are but women, proofs are men: it is reason that must be the chariot to carry men to give their concurrence to this judgment: therefore I shall deliver my thoughts to the courteous reader, as I was prepared for it, if issue had been joined in the cause, but with some addition, for illustration's sake, desiring excuse for the preamble, because there is some repetition in matter."

He also made the following Addition at the end:

"Courteous Reader, for thy full satisfaction in matter of law, how the late King was by the law of the land accountable for his tyrannous and traitorous exorbitancies, I refer thee to my Lord President's most learned and judicious speech before the sentence read; and I have one word to add, That High Court was a resemblance and representation of the great Day of Judgment, when the saints shall judge all worldly powers, and where this judgment will be confirmed and admired; for it was not only *bonum*, but *bene*; not only good for the matter, but the manner of proceeding. This High Court did not only consult with Heaven for wisdom and direction, (a precedent for other courts to begin every solemn action with prayer), but examined witnesses several days upon oath, to inform their consciences; and received abundant satisfaction in a judicial way (which by the law of the land was not requisite in treason, the prisoner standing mute) as judges, which before was most notorious, and known to them as private persons; and having most perspicuously discerned and weighed the merits of the cause in the balances of the sanctuary, law, and right reason, pronounced as righteous a sentence as ever was given by mortal men. And yet what action was ever so good, but was traduced, not only by unholy men, but by the holy men of the world? That professors

sands of people murdered, and infinite other mischiefs committed: For all which high and treasonable offences, the said Charles Stuart might long since justly have been brought to

should pray for justice, and then repine at the execution of it: blessed Lord! how does the god of this world storm, now his kingdom is shaking! An enlightened eye must needs see that it is the design of Heaven to break all human glory with an iron sceptre, that will not kiss his golden sceptre, and to exalt justice and mercy in the earth. I confess, if the greater part of the world should approve such high and noble acts of justice, it might be suspected, because the most people will judge erroneously: but that Christians that have fasted and prayed many years for justice, should now be angry to see it done; what is it, but like foolish passengers, that having been long at sea in dangerous storms, as they are entering into the quiet haven, to be mad with the pilot because he will not return into the angry seas? But I shall observe one passage in the Lord President's speech, as a scholar may presume to say a word after his master, concerning the many menaces and minatory dangerous speeches which are given forth concerning this High Court; if men must be killed for the faithful discharge of their duties to God and their country, I am sure the murderer will have the worst of it in conclusion, if he should not be known here, (though murder is a sin that seldom goes unpunished in this world; and never did any jesuit hold it meritorious to kill men for bringing tyrants and murderers to justice, or to do such horrid acts in the sight of the sun). It was a noble saying of the Lord President, That he was afraid of nothing so much as the not doing of justice; and when he was called to that high place which was put upon him, he sought it not, but desired to be excused more than once; not to decline a duty to God and the people, for fear of any loss or danger, (being above such thoughts by many stories, as actions testify), but alledging that of himself, out of an humble spirit, which, if others had said of him, I am sure they had done him a great deal of wrong. And though he might have been sufficiently discouraged, because it was a new unprecedented tribunal of condemning a king, (because never did any king so tyrannise and butcher the people: find me but that in any history, and on the other side the leaf you shall find him more than beheaded, even to be quartered, and given to be meat to the fowls of the air); yet the glory of God and the love of justice constrained him to accept it: and with what great wisdom and undauntedness of resolution, joined with a sweet meekness of spirit, he hath performed it, is most evident to all, the malignants themselves being judges. Concerning this High Court, to speak any thing of this glorious administration of justice, is but to shew the sun with a candle, (the sun of justice now shines most gloriously, and it will be fair we-

exemplary and condign punishment. Whereas also, the parliament well hoping that the restraint and imprisonment of his person, after it had pleased God to deliver him into their

ther in the nation; but, alas! the poor mole is blind still, and cannot see it; but none so blind as they that will not see it). However, it is not proper or convenient for me at present to speak all the truth that I know (the generations that are to come will call them blessed) concerning the integrity and justice of their proceedings, lest I that am a servant should be counted a sycophant, which I abhor in my soul, as my body does poison: and this I will be bold to say, (which I hope God guides my hand to write), this High Court hath cut off the head of a tyrant; and they have done well: undoubtedly it is the best action that they ever did in all their lives; a matter of pure envy, not hatred; for never shall or can any men in this nation promerit so much honour as these have done, by any execution of justice comparable to this. And, in so doing, they have pronounced sentence, not only against one tyrant, but tyranny itself: therefore, if any of them shall turn tyrants, or consent to set up any kind of tyranny by a law, or suffer any unmerciful of domineering over the consciences, persons, and estates, of the free people of this land, they have pronounced sentence against themselves; but good trees cannot bring forth bad fruits; therefore let all desperate malignants repent, ere it be too late, of any such ungodly purposes, and fight no longer against God. Every man is sown here as a seed or grain, and grows up to be a tree; it behoves us all to see in what ground we stand. Holy and righteous men will be found to be timber for the great building of God in his love, when tyrants, and enemies to holiness and justice, will be for a threshold or footstool to be trodden upon, or fit for the fire.

"Lastly, For myself, I bless God, I have not so much fear as comes to the thousandth part of a grain; it is for Cain to be afraid that 'every man that meets him will slay him.' I am not much solicitous whether I die of a consumption, or by the bands of Ravilliacs; I leave that to my heavenly Father. If it be his will that I shall fall by the hand of violence, 'It is the Lord, let him do what he pleaseth.' If my indentures be given in before the term of my apprenticeship be expired, and that I be at my Father's house before it be night, I am sure there is no hurt in all this. If I have but so much time left, I shall pray my Father to forgive the murderer. The blood of Christ can wash away sins of the deepest stain; but when he sees his children's blood sprinkled upon the bloody wretch, he loves every member as he loves himself. But know this, ye that have conceived any desperate intentions against these honourable justices, who made you free-men, unless you will return to Egypt; if God, in wrath to you, and love to any of his people, should suffer you to imbrow your hands in any

hands, would have quieted the distempers of the kingdom, did forbear to proceed judicially against him; but found by sad experience, that such their remissness served only to encourage him and his complices in the continuance of their evil practices, and in raising of new commotions, rebellions and invasions: For prevention therefore of the like or greater inconveniencies, and to the end no chief officer or magistrate whatsoever may hereafter presume traitorously and maliciously to imagine or contrive the enslaving or destroying of the English nation, and to expect impunity for so doing: Be it ordained, and enacted by the Commons in parliament, and it is hereby ordained and enacted by authority thereof, That Thomas lord Fairfax; Oliver Cromwell, Henry Ireton, esquires: sir Hardress Waller, knight; Philip Skippon, Valentine Wanton, Thomas Harrison, Edward Whaley, Thomas Pride, Isaac Ewer, Richard Ingoldsby, Henry Mildmay, esquires; sir Thomas Honeywood, Thomas lord Grey of Grooby, Philip lord Lisle, William lord Mounson\*, sir John Danvers†, sir Thomas Maleverer, baronet; sir John Bourchier, sir James Harrington, sir William Allanson, sir Henry Mildmay†, sir Thomas

of their innocent blood, either you will repent, or not; if you repent, it will cost you ten times more anguish and grief of heart, than the pleasure of the sin can cause delight: and what a base thing it is to do that which must be repented of at the best! But if you repent not, it had been better for you to have never been born. But let every man be faithful in doing his duty, and trust God with the success, and rejoice in Christ in the testimony of a good conscience; for he that hath not a soul to lose, hath nothing to lose. But, blessed be God, I have a soul to lose; therefore I desire only to fear him, whom to fear, 'is the beginning of wisdom;' and for all malignants to come in, and join with honest men in settling this nation upon noble principles of justice, freedom, and mercy to the poor, will be their best and greatest understanding."

Butler, the author of 'Hudibras,' published an Answer to the above, with this title, "The Plagiarism Exposed; or, An Old Answer to a Newly-revived Calumny against the Memory of King Charles the First: being a Reply to a Book, entitled 'King Charles's Case;' formerly written by John Cook, of Gray's Inn, Barrister, and since copied out under the title of 'Colonel Ludlow's Letter.'"

\* "Lord Mounson and Mr. Holland were domestic servants of the king before the Troubles." Oldmixon, 366.

† "The only two men who were known to the king before the Troubles, were, sir Harry Mildmay, Master of the king's Jewel House, who had been bred up in the court, being younger brother of a good family in Essex, and who had been prosecuted with so great favours and bounties by king James, and by his majesty, that he was raised by them to a great

Wroth, knights; sir William Masham, sir John Barrington, sir William Brereton, baronets; Robert Wallop, William Heveningham, esquires; Isaac Pennington, Thomas Atkins, Rowland Wilson †, Alderman of the city of London; sir Peter Wentworth, knight of the Bath, Henry Martin, William Purefoy, Godfrey Bosvile, John Trenchard, Herbert Morley, John Berkstead, Matthew Thomlinson, John Blackistone, Gilbert Millington, esquires; sir William Constable, baronet; Edmund Ludlow, John Lambert, John Hutchinson, esquires; sir Arthur Hazlerig, sir Michael Livesey, baronets; Richard Salwey, Humphry Salwey, Robert Titchbourn, Owen Roe, Robert Manwaring, Robert Lilbourn, Adrian Scroop, Richard Dean, John Okey, Robert Overton, John Huson, John Desborough, William Goff, Robert Duckenfield, Cornelius Holland, John Careyll, esquires; sir William Armyn, baronet; John Jones, esq.; Miles Corbet, Francis Allen, Thomas Lister, Benjamin Weston, Peregrine Pelham, John Gourdon, esquires; Francis Thorp, serjeant at law; John Nutt, Thomas Challoner, Algernon Sidney, John Aubaby, John More, Richard Darley, William Say, John Alured, John Fagg, James Nelthrop, esquires; sir William Roberts, knight; Francis Lassels, Alexander Rigby, Henry Smith, Edmond Wild, James Challoner, Josias Berners, Dennis Bond, Humphry Edwards, Gre-

estate, and preferred to that office in his house, which is the best, under those which entitle the officers to be of the privy council. No man more obsequious to the court than he, whilst it flourished; a great flatterer of all persons in authority, and a spy in all places for them. From the beginning of the parliament, he concurred with those who were most violent against the Court, and most like to prevail against it; and being thereupon branded with ingratitude, as that brand commonly makes men most impudent, he continued his desperate pace with them, till he became one of the murderers of his master. The other was sir John Danvers, the younger brother and heir of the earl of Danby, who was a gentleman of the privy chamber to the king, and being neglected by his brother, and having, by a vain expense in his way of living, contracted a vast debt which he knew not how to pay, and being a proud formal weak man, between being seduced and a seducer, became so far involved in their counsels that he suffered himself to be applied to their worst offices, taking it to be a high honour to sit upon the same bench with Cromwell, who employed and contemned him at once: nor did that party of miscreants look upon any two men in the kingdom with that scorn and detestation, as they did upon Danvers and Mildmay." Clarendon.

† "Colonel Rowland Wilson, a person of great worth and integrity, refused to act as a Commissioner (though named) in this business, or to sit with them." Whitelocke.

‡ This ought to be Carew.

gory Clement, John Fry, Thomas Wogan, esquires; sir Gregory Norton, baronet; John Bradshaw, serjeant at law; Edmond Harvey, John Dove, John Ven, esquires; John Fowks, alderman of the city of London; Thomas Scot, esq.; Thomas Andrews, alderman of the city of London; William Cawley, Abram Burrell, Anthony Staply, Roger Gratwick, John Downs, Thomas Horton, Thomas Hammond, George Fenwick, esquires; Robert Nicholas, serjeant at law; Robert Reynolds, John Lisle, Nicholas Love, Vincent Potter, esquires; sir Gilbert Pickering, bart. John Weaver, Roger Hill, John Lenthall, esquires; sir Edward Bainton; John Corbet, Thomas Blunt, Thomas Boon, Augustine Garland, Augustine Skinner, John Dixwell, George Fleetwood, Simon Meyne, James Temple, Peter Temple, Daniel Blagrove, esquires; sir Peter Temple, knt. and bart. Thomas Wayte, John Brown, John Lowrey, esquires; shall be, and are hereby appointed and required to be commissioners and judges for the hearing, trying and adjudging of the said Charles Stuart. And the said commissioners, or any twenty, or more of them, shall be and are hereby authorized and constituted an High Court of Justice, to meet and sit at such convenient time and place as by the said commissioners, or the major part of twenty, or more of them, under their hands and seals, shall be appointed and notified by public proclamation at the Great Hall or Palace-yard at Westminster; and to adjourn from time to time, and from place to place, as the said High-Court, or major part thereof meeting shall hold fit; and to take order for the charging of him the said Charles Stuart with the crimes and treasons above-mentioned, and for the receiving of his personal answer thereunto; and for the examination of witnesses upon oath, which the court hath hereby authority to administer, or otherwise, and taking any other evidence concerning the same: and thereupon, or in default of such answer, to proceed to final Sentence, according to justice and the merit of the cause; and such final Sentence to execute, or cause to be executed, speedily and impartially. And the said court is hereby authorized and required to appoint and direct all such officers, attendants, and other circumstances, as they, or the major part of them, shall in any sort judge necessary or useful for the orderly and good managing of the premises. And Thomas lord Fairfax, the general, and all officers and soldiers under his command, and all officers of justice, and other well-affected persons, are hereby authorized and required to be aiding and assisting unto the said court in the due execution of the trust hereby committed. Provided, that this act, and the authority hereby granted, do continue in force for the space of one month, from the making hereof, and no longer.

"HEN. SCOBELL, Cler. Parl. Dom. Com."

In pursuance of which said Act, the House of Commons ordered as followeth, viz.

Die Sabbati, 6 Jan. 1649.

"Ordered by the Commons assembled in parliament, That the Commissioners nominated in the Act, for erecting of an High Court of Justice for the trying and judging of Charles Stuart, king of England, do meet on Monday next, at 2 of the clock in the afternoon, in the Painted Chamber."

By virtue of which said recited Act, and of the said Order grounded thereupon, the Commissioners whose names are here under-written, met on Monday the said 8th day of January, 1649, in the said Painted Chamber, at Westminster: where the said Act was openly read, and the Court called.

Commissioners present.

Tho. lord Fairfax,	T. Id. Grey of Grooby,
Oliver Cromwell, esq.	Sir John Danvers,
Henry Ireton, esq.	Sir Th. Maleverer, bt.
Sir Hardress Waller, *	Sir John Bourchier,
Valentine Wauton,	Sir Henry Mildmay,
Edward Whaley, †	James Challoner, esq.
Thomas Pride,	Greg. Clement, esq. *
Isaac Ewers,	John Fry, esq.
Sir Greg. Norton, bt.	Augus. Garland, esq. *
Peter Temple, esq. *	Daniel Blagrove, esq.
John Ven, esq.	Rt. Tichbourne, esq. *
Tho. Challoner, esq.	W. Heveingham, esq. *
Henry Marten, esq. *	William Purefoy, esq.
John Berkstead, esq. *	John Blackistone, esq.
Gilb. Millington, esq. *	Wm. lord Mounson,
Richard Deane, esq.	John Okey, esq. *
Cora. Holland, esq.	John Carew, esq. *
John Jones, esq. *	Peregrine Pelham, esq.
John Alured, esq.	Francis Lassells, esq.
Henry Smith, esq. *	John Downes, esq. *
John Lisle, esq. †	John Brown, esq.
James Temple, esq. *	John Hutchinson, esq.
Adrian Scroope, esq. *	Miles Corbet, esq. *
Edmund Ludlow, esq.	Humph. Edwards, esq.
John Huson, esq.	Edm. Harvey, esq. *
Tho. Harrison, esq. *	William Goff, esq.
Nicholas Love, esq.	

The Commissioners of the Court being, as aforesaid, met, and informing themselves of the

|| Fairfax concurred actively in the Restoration, (see 4 Cobb. Parl. Hist. 32.) and died in 1671.

\* See the Trials of the Regicides, *infra*.

† Dixwell, Whalley and his son in law Goffe, took refuge in America. Some curious particulars of them are related in "Stiles's History of the three Judges," Hutchinson's "History of Massachusetts's Bay," and Jansson's "Stranger in America."

† He was excepted out of the Bill of Indemnity on the Restoration of Charles 2, and was afterwards murdered at Lausanne, August 11, 1664. The particulars of this murder, and other circumstances concerning him, are related in the Memoirs of his friend and co-refugee Ludlow, vol. 3. See his Widow's Case, A. D. 1685, *infra*.

tenor of their Commission, they accordingly appoint the said Court to be holden in the same place on Wednesday the 10th of the said month of January: and ordered Proclamation thereof to be made in the Great Hall at Westminster by Edward Dendy, serjeant at arms; authorizing him thereunto by precept, under their hands and seals, in these words following, viz.

"By virtue of an Act of the Commons of England, assembled in parliament, for erecting of an High Court of Justice for the trying and judging of Charles Stuart, king of England, we, whose Names are here under written, (being Commissioners, amongst others nominated in the said act) do hereby appoint, That the High Court of Justice, mentioned in the said act, shall be holden in the Painted Chamber in the palace of Westminster, on Wednesday the 10th day of this instant January, by 1 of the clock in the afternoon. And thus we do appoint to be notified by public proclaiming hereof in the Great Hall at Westminster to-morrow, being the 9th day of this instant January, betwixt the hours of 9 and 11 in the forenoon. In testimony whereof, we have hereunto set our hands and seals this 8th day of January, Anno Domini 1649."

"We the Commissioners, whose names are hereunto subscribed, do hereby authorize and appoint Edward Dendy, serjeant at arms, to cause this to be proclaimed, according to the tenor thereof, and to make due return of the same, with this Precept, to the said Court, at the time and place above-mentioned.

"Sealed and subscribed by

William Monson,	John Huson,
Tho. Grey,	Peregr. Pelham,
Oliver Cromwell,	Edmond Ludlow,
Gregory Norton,	John Berkstead,
Henry Ireton,	Peter Temple,
H. Edwards,	Edw. Whaley,
John Hutchinson,	John Okey,
Har. Waller,	Rob. Tichbourne,
William Constable,	Thomas Pride,
John Lisle,	Henry Smith,
Henry Marten,	Thomas Maleverer,
Valentine Wauton,	Thomas Chaloner,
John Blackistone,	John Fry,
Gilbert Millington,	John Bourchier,
Adrian Scroope,	John Carew,
James Temple,	Aug. Garland,
James Chaloner,	Richard Deane,
Thomas Harrison,	Daniel Blagrove."
John Jones,	

Which said Precept is thus returned on the backside, viz. "I have caused due Proclamation to be made hereof, according to the tenor of the Precept within written.

"E. DENDY, Serjeant at Arms."

And in order to the more regular and due Proceedings of the said Court, they nominate officers; and accordingly chose Mr. Aske, Dr.

Dorislaus\*, Mr. Steel, and Mr. Cook†, counsel, to attend the said Court; Mr. Greaves and Mr. John Phelps, clerks; to whom notice thereof was ordered to be given.

Mr. Edward Walford, Mr. John Powell, Mr. John King, Mr. Phineas Payne, and Mr. Hull, are chosen messengers to attend this court.

January 9, 1649, according to the Precept of the 8th instant, serjeant Dendy made Proclamation for the sitting of the said Court in the manner following, viz. About 10 of the clock of the same day the said Serjeant, being attended with six trumpets, and a guard of two troops of horse, himself with them on horseback, bearing his mace, rideth into the middle of Westminster-Hall (the Court of Chancery then sitting at a General Seal), where, after the said trumpets sounding (the drums then likewise beating in the Palace-Yard), he caused the said Precept to be openly read: which being done, the House of Commons, at the same time sitting, order as followeth;

Die Martis, 9 Jan. 1649.

"Ordered by the Commons assembled in Parliament, That the same Proclamation that was made this morning in Westminster-Hall, touching the Trial of the King, be made at the Old Exchange and at Cheapside forthwith, and in the same manner; and that serjeant Dendy, the serjeant at arms, do proclaim the same accordingly; and that the guard that lieth in Paul's do see the same done."

In pursuance whereof, Serjeant Dendy, about twelve of the clock of the same day, accompanied with ten trumpets, and two troops of horse, drawn out for that purpose in Paul's Church-yard, himself mounted, bearing his Mace, marched from thence unto the Old Exchange, London; where, after the trumpets had sounded, he made Proclamation as he had done before in Westminster-Hall: and from thence immediately marched to Cheapside, making the like Proclamation there also in manner as aforesaid. During all which time all the streets were thronged with spectators, without the least violence, injury, or affront, publicly done or offered.

Mercurii, 10 Jan. 1649. Painted Chamber.  
Commissioners present.

Oliver Cromwell, esq.	Sir John Danvers.
Henry Ireton, esq.	John Fry.
Sir Har. Waller, kt.	Sir Gregory Norton.
Valen. Wauton, esq.	Augustine Garland.
Edward Whaley, esq.	Peter Temple.
Thom. Harrison, esq.	Daniel Blagrove.
Thomas Pride, esq.	John Ven.
Sir T. Maleverer, bart.	Henry Marten.
James Challoner.	William Pursefoy.

\* He was afterwards sent by the new Commonwealth as their Agent to the States of Holland, but the same night that he arrived at the Hague, was barbarously assassinated, as he was at supper, by six Scotchmen in the train of the marquis of Montrose.

† See the Trials of the Regicides; *infra*.

John Blackstone.	Peregrine Pelham, esq.
Gilbert Millington.	John Moor, esq.
Edmond Ludlow.	William Say, esq.
John Hutchinson.	Francis Lassels, esq.
John Corbet.	Henry Smith, esq.
Rob. Tichbourne, esq.	Thomas Scot, Esq.
Owen Roe, esq.	Nicholas Love, esq.
John Deane, esq.	Vincent Potter, esq.
John Huseon, esq.	Adrian Scroope, esq.
Cornelius Holland, esq.	John Dixwell, esq.
John Carew, esq.	John Lisle, esq.
Thomas Lister, esq.	John Okey, esq.
Sir Hen. Miklmay, kt.	John Berkstead, esq.
Thom. Challoner, esq.	

The Court being sat in the said place aforesaid, began to take into consideration the Manner and Order that they intended to observe at the King's Trial, and appointed two ushers of the Court, viz. Mr. Edward Walford and Mr. Vowel; and Mr. Litchman was chosen a messenger to the Court.

John Bradshaw, \* Serjeant at Law, a Commissioner of this Court, was then chosen President of the said Court; who being absent, Mr. Say, one of the Commissioners then present, was appointed President *pro tempore*, and until the said serjeant Bradshaw should attend the said service. The said Mr. Say accordingly took his place, and gave the thanks of the Court to Mr. Garland, one of the Commissioners of this Court, for his great pains by him formerly taken about the business of this Court.

The Court were informed of the great and important employment that at present lay upon Mr. Greaves, in the behalf of the Commonwealth, from which he cannot be spared, without prejudice to the public; and it was therefore moved in his behalf, That he might be excused from attending the service of one of the Clerks of the said Court; which the Court admitted as a sufficient excuse: And thereupon Mr. Andrew Broughton was named and appointed one of the Clerks of this Court, with John Phelps. The said John Phelps being then sent for by a messenger of the Court, and accordingly making his appearance, was commanded to attend the said service; who attended the same accordingly. And a messenger of the Court was sent to summon the said Mr. Broughton.

Mr. Aske, Mr. Steel, Dr. Dorislaus, and Mr. Cook, are appointed Counsel in the behalf of the Commonwealth, to prepare and pro-

\* "Mr. Serjeant Bradshaw, the President, was afraid of some tumult upon such new and unprecedented insolence as that of sitting Judge upon his King; and, therefore, beside other defence, he had a thick high-crowned beaver hat, lined with plated steel to ward off blows. This hat had long hung useless, when the Reverend Dr. Blisse, preacher at the Rolls, lighting on it, sent it for a present to the Museum in Oxford, with a Latin Inscription, to preserve the history of it." 3 Kennett's Compl. Hist. (2d. edit.) 181. note (a).

secute the Charge against the King, according to the Act of the Commons assembled in Parliament in that behalf; and, in particular, the Court did appoint Mr. Steel Attorney, and Mr. Cook Solicitor, to take care thereof. And the Act for constituting the said Court was ordered to be transcribed, and delivered to the said Counsel; which was done accordingly.

Mr. Love, Mr. Lisle, Mr. Millington, Mr. Garland, Mr. Marten, Mr. Tho. Challoner, Sir John Danvers, and Sir Henry Mildmay, or any Two of them, are appointed a Committee, to consider of all circumstances in matter of Order or Method for the carrying on and managing the King's Trial; and for that purpose to advise with the counsel assigned to prove the Charge against the King, and to make report therein the next sitting: And the care of the business is particularly recommended to Mr. Love.

Edward Dendy, Serjeant at Arms, made return of the Precept of the 8th instant, for proclaiming the sitting of the Court; which was received: The said Serjeant Dendy having proclaimed the same by the sound of trumpet in Westminster-Hall, as also at the Old Exchange, and in Cheapside.

Edward Dendy, Serjeant at Arms, is appointed Serjeant at Arms, to attend the said Court: Mr. John King is appointed Cryer of the said Court.

The Court having thus made preparations for the said Trial (during all which time they sat private), the doors are now opened for all parties, that had any thing to do there, to give their attendance. Three Proclamations being made by the Cryer, the Act for constituting the said Court was openly read, and the Court called: The Commissioners present were as before named. The Commissioners that were absent were ordered to be summoned to attend the said service; and summons were issued forth accordingly. The Court adjourned itself till Friday, Jan. 12, at two of the clock in the afternoon, to the same place.

Jan. 12, 1649.

At which time the Commissioners present, were as after named.

Die Veneris, 12 Jan. 1649. Painted-Chamber. Commissioners present.

Oliver Cromwell, esq.	Thomas Pride, esq.
Sir John Danvers,	John Lisle, esq.
Tho. Hammond, esq.	Owen Roe, esq.
Peregrine Pelham, esq.	Thomas Scot, esq.
Herbert Morley, esq.	John Jones, esq.
James Temple, esq.	John Carew, esq.
William Say, esq.	John Fagg, esq.
John Huson, esq.	Henry Marten, esq.
Sir J. Bouchier, kt.	John Blackistone, esq.
J. Bradshaw, serj.,	John Dove, esq.
Gil. Millington, esq.	Henry Smith, esq.
John Moor, esq.	John Ven, esq.
John Brown, esq.	John Downs, esq.
John Fry, esq.	Nicholas Love, esq.
Sir Hard. Waller, kt.	Thomas Harrison, esq.
Adrian Scroope, esq.	John Berkstead, esq.
Tho. Challoner, esq.	(With divers more.)

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Serjeant Bradshaw upon special summons attended this Court, being one of the commissioners thereof. And being, according to former Order, called to take his place of President of the said Court, made an earnest apology for himself to be excused; but therein not prevailing, in obedience to the commands and desires of this Court, he submitted to their order, and took place accordingly. And, thereupon, the said Court ordered concerning him as followeth, viz. "That John Bradshaw, Serjeant at Law, who is appointed President of the Court, should be called by the name, and have the Title of Lord President, and that as well without as within the said Court, during the commission and sitting of the said Court." Against which Title, he pressed much to be heard to offer his exceptions; but was therein over-ruled by the Court.

Mr. Andrew Broughton attended according to former order: and it was thereupon again ordered, That Andrew Broughton and John Phelps, gent. be, and they are hereby constituted Clerks of the said Court, and enjoined to give their attendance from time to time accordingly.

Ordered, That the Counsel assigned, or such as they or any of them shall appoint, shall have power to search for all Records and Writings concerning the king's Trial, and to take into their custody, or order the producing of all such records and papers, or copies thereof, by any clerk, or other person whatsoever, at or before the said Trial, as they shall judge requisite; the said counsel giving a note under their hands of their receipt of all such original books and papers, which they shall so take into their custody. And that the said counsel shall have power to send for such person or persons, at or before the said Trial, and to appoint, by writing under their hands, their attendance for the service of the state in this business, as they shall think requisite, requiring all persons concerned to yield obedience thereunto at their perils.

Sir Hardress Waller, knight, and col. Harrison, are ordered to desire the Lord General from time to time to appoint sufficient Guards, to attend and guard the said Court during their sitting.

Ordered, That col. Tichbourne, col. Roe, Mr. Blackistone, and Mr. Fry, members of this Court, shall and do make preparations for the Trial of the King, That it may be performed in a solemn manner: and that they take care for other necessary provisions and accommodations in and about that Trial; and are to appoint and command such workmen in and to their assistance, as they shall think fit.

Mr. Love reporteth from the committee appointed Jan. 10, instant, to consider of the circumstances in matters of order for Trial of the King: and it is thereupon ordered, That in managing the proceedings in open court, at the time of the King's Trial, none of the court do speak but the President and Counsel: and

in case of any difficulty arising to any one, that he speak not to the matter openly, but desire the President that the court may please to advise. By which Order it is not intended that any of the commissioners be debarred, at the examination of any witness, to move the Lord President to propound such question to the witness, as shall be thought meet for the better disquisition and finding out of the truth.

Ordered, That there shall be a marshal to attend this court, if there be cause. That the Lord President and Counsel do manage the Trial against the King, according to instructions to be given them by the Court; and that the Committee for considering of all circumstances for the managing of the King's Trial, do consider of Rules and Instructions in that behalf; and are to consult with the counsel, and address themselves to the Lord President for advice in the premises. That the Counsel do bring in the Charge against the King on Monday next.

The Committee for considering of the circumstances of Order for the King's Trial, together with sir Hardress Waller, col. Whaley, Mr. Scot, col. Tichbourne, col. Harrison, lieutenant. Cromwell, and col. Deane, are appointed to consider of the place for trying the King, and make report to-morrow in the afternoon; and are to meet to-morrow morning in the Inner-Court of Wards, at nine of the clock: and who else of the Court please may be there.

The Court adjourned itself till the morrow in the afternoon, at two of the clock.

*Sabbati, 13 Jan. 1649.*

Proclamation being made, and all parties concerned required to give attendance, the Court is called openly.

*Commissioners present.*

John Bradshaw, Serjeant at Law, Lord President of this Court.

Oliver Cromwell, esq.	John Fagg, esq.
Henry Ireton, esq.	Francis Lassels, esq.
Sir Hard. Waller, kt.	Valen. Wauton, esq.
Edw. Whaley, esq.	Henry Smith, esq.
Tho. Pride, esq.	Hum. Edwards, esq.
Isaac Ewer, esq.	John Fry, esq.
Sir John Danvers,	Sir T. Maleverer, bart.
Sir Greg. Norton,	W. Heyveningham, esq.
Wm. Purefoy, esq.	John Dove, esq.
John Blackistone, esq.	John Venn, esq.
Gilb. Millington, esq.	Tho. Scot, esq.
Sir W. Constable, bart.	John Downes, esq.
John Hutchinson, esq.	Adrian Scoope, esq.
Wm. Goffe, esq.	John Lisle, esq.
Corn. Holland, esq.	August. Garland, esq.
John Carew, esq.	John Dixwell, esq.
Tho. Challoner, esq.	Dan. Blagrove, esq.
Algernon Sidney, esq.	John Brown, esq.
Wm. Say, esq.	

The Court being to make further preparations for the King's Trial, sit private. The Serjeant at Arms is authorized to employ such other messengers as shall be needful for the service of the Court, giving in their names to the clerks of this Court.

Ordered, That the Serjeant at Arms do search and secure the Vaults under the Painted Chamber, taking such assistance therein from the soldiery as shall be needful.

Mr. Garland reporteth from the Committee for considering of the place for the King's Trial: and the Court thereupon ordered, That the said Trial of the King shall be in Westminster-Hall; That the place for the King's Trial shall be where the Courts of King's-Bench and Chancery sit in Westminster-Hall; and that the partitions between the said Two Courts be therefore taken down; and that the committee for making preparations for the King's Trial are to take care thereof accordingly.

The Court adjourned itself till Monday at two of the clock in the afternoon to this place.

*Lune, 15 Jan. 1649.*

Three Proclamations are made, and all parties concerned are required to give attendance. The Court is called openly.

*Commissioners present.*

John Bradshaw, Serjeant at Law, Lord President of this Court.

John Deane, esq.	Vincent Potter, esq.
John Berkstead, esq.	August. Garland, esq.
Isaac Ewer, esq.	James Tenple, esq.
Robert Lilbourn, esq.	Dan. Blagrove, esq.
Tho. Hammond, esq.	John Blackistone, esq.
Edw. Whaley, esq.	Oliver Cromwell, esq.
Tho. Pride, esq.	Rob. Tichbourne, esq.
Thomas lord Grey of Grooby.	John Jones, esq.
Wm. Id. Mounson,	John Downes, esq.
Sir John Danvers,	Sir Hardress Waller,
Sir J. Maleverer, bart.	Tho. Horton, esq.
Sir Tho. Wroth,	Henry Ireton, esq.
Robert Wallop, esq.	Algernon Sidney, esq.
Henry Marten, esq.	Peter Temple, esq.
Wm. Purefoy, esq.	Nich. Love, esq.
Gilb. Millington, esq.	Valen. Wauton, esq.
Edm. Ludlow, esq.	John Lisle, esq.
John Hutchinson, esq.	John Venn, esq.
Adrian Scoope, esq.	Corn. Holland, esq.
John Okey, esq.	Tho. Scot, esq.
John Huson, esq.	Sir Wm. Constable, bt.
Peregrine Pelham, esq.	Herbert Morley, esq.
Tho. Challoner, esq.	Miles Corbet, esq.
John Moor, esq.	John Fry, esq.
John Alured, esq.	Wm. Goffe, esq.
Henry Smith, esq.	John Fagg, esq.
James Challoner, esq.	John Carew, esq.
Hum. Edwards, esq.	Sir Henry Mildmay,
	Sir Greg. Norton, bart.

Fifty-eight Commissioners present.

Here the Court sit private.

The Counsel attended, and presented to the Court the draught of a Charge against the King. Which being read, the Court appointed Commissary-general Ireton, Mr. Millington, Mr. Marten, col. Harvey, Mr. Challoner, col. Harrison, Mr. Miles Corbet, Mr. Scot, Mr. Love, Mr. Lisle, Mr. Say, or any three of them, to be a Committee, to whom the Counsel might resort, for their further advice con-

cerning any thing of difficulty in relation to the Charge against the King: who were likewise with the counsel to compare the Charge against him with the Evidence, and to take care for the preparing and fitting the charge for the Court's more clear proceedings in the businesses; as likewise to advise of such general rules as are fit for the expediting the business of the said Court, and to meet the morrow-morning at eight of the clock in the Queen's-Court.

Col. Ludlow, col. Purefoy, col. Hutchinson, col. Scroope, col. Deane, col. Whalley, col. Huson, col. Pride, sir Hardress Waller, sir Wm. Constable, together with the Committee for making preparations for the King's Trial, or any three of them, are appointed a committee to consider of the manner of bringing the king to the court at his Trial, and of the place where he shall be kept, and lodge at, during his said Trial; and to take consideration of the secure sitting of the said Court, and placing the Guards that shall attend it, and are to meet to-morrow morning, at eight of the clock, in the Inner Star-Chamber.

The Court taking notice of the nearness of Hilary term, and necessity they apprehended of adjourning it in regard of the King's Trial, thereupon were of opinion, That it is fit that a fortnight of the said term be adjourned: and Mr. Lisle is desired to move the house therein.

Three Proclamations.

The Court adjourned itself till Wednesday next, at eight in the morning.

*Mercurii, 17 Jan. 1649.*

Three Proclamations are made, and all parties concerned are required to give attendance.

The Court is called.

Commissioners present.

John Bradshaw, Sergeant at Law, Lord President of this Court.

Oliver Cromwell, esq.	William Goff
Edward Whalley, esq.	John Carew
Th. M. Grey of Grooby	Thomas Pride
Sir John Danvers	Francis Allen
Sir Jn. Maleverer, bt.	Peregrine Pelham
Sir Hardress Waller	John Moor
John Blackstone, esq.	Francis Lassels
John Berkstead, esq.	Henry Smith
Sir Wm. Constable	James Challoner
John Hutchinson	Humphrey Edwards
Robert Tichbourne	John Fry
Owen Roe	Sir Gregory Norton
Adrian Scroope	John Venn
Richard Deane	William Cawley
John Okey	Thomas Horton
John Huson	Thomas Hammond
Augustine Garland	Isaac Ewers
Simon Meyne	Cornelius Holland
Peter Temple	Sir John Bourchier
John Brown	Edmond Ludlow
Thomas Scot	Edmond Harvey
Thomas Lister	Edmond Wild
John Jones	Thomas Heath
Vincent Potter	Wm. Heveningham

Daniel Blagrove  
William Say  
Nicholas Love  
Robert Lilbourne

Henry Marten  
William Purefoy  
John Lisle.

Fifty-six Commissioners present.

Ordered, That the Commissioners of this Court, who have not hitherto appeared, be summoned by warrants, under the hands of the clerks of the Court, to give their personal attendance at this Court, to perform the service to which they are, by act of the Commons of England assembled in parliament, appointed and required.

Ordered, That the Serjeant at Arms attending this Court, or his deputy, do forthwith summon all the aforesaid commissioners, making default, who reside or dwell within twenty miles of London.

Particular warrants to every one of them were accordingly issued forth for their attendance.

Upon report made by col. Hutchinson, from the Committee to consider of the manner of bringing the King to Trial, &c. the Court order as followeth, viz. "Ordered, That sir Robert Cotton's house be the place where the King shall lodge during his Trial. That the chamber in sir Robert Cotton's house, next the study there, shall be the King's bed-chamber. That the great chamber, before the said lodging-chamber, be for the King's dining-room; and that a guard, consisting of thirty officers, and other choice men, do always attend the King, who are to attend him at his lodging above stairs; and that two of the said thirty do always attend in his bed-chamber. That a place for a court of guard, for 200 foot soldiers, be built in sir Robert Cotton's garden, near the water-side. That ten companies of foot be constantly upon the guards, for securing sir Robert Cotton's house; and those companies to be quartered in the Court of Requests, the Painted Chamber, and other necessary places thereabouts. That the passage that cometh out of the Old Palace into Westminster Hall be made up at the entrance of the said passage, next the said guard. That the top of the stairs at the Court of Wards' door have a cross-bar made to it. That the King be brought out of sir Robert Cotton's house to his Trial the lower way into Westminster Hall, and so brought to the bar in the face of the Court, attended by the abovesaid guard above stairs. That two rails, of above forty feet distance from the place where this Court shall sit in Westminster Hall, be made cross the said Hall; for the effectual and substantial doing whereof, this Court do refer it to the care of the committee appointed to consider of the manner of bringing the King to Trial; who are likewise to take care for raising the floor in such part of the Hall as they shall think fit for placing of the guards; and that a rail or rails, from the Court down to the Hall gate, be made, in such manner as they shall think fit, on the Common Pleas' side, to keep the people from

the soldiers. That there be guards set upon the leads, and other places that have windows to look into the Hall. That the General be desired, from time to time, to send and appoint convenient guards of horse, for the convenient sitting of the Court. That twenty officers, or other gentlemen, do attend upon the Lord President, from time to time, to and from this Court, through Westminster Hall. That the officers of the Ordnance do send unto this Court 200 halberts, or partizans, lying within the Tower of London, for the arming of the guards that are to attend this Court. That at the time of the Trial of the King, the Commissioners do, before their sitting in the Court, meet in the Exchequer Chamber, and do from thence come up to the Hall into the Court. That all back doors from the house called *Hell* be stopped up during the King's Trial. That lodgings be prepared for the Lord President at sir Abraham Williams's house, in the New Palace-yard, during the sitting of this Court; and that all provisions and necessaries be provided for his lordship. That sir Henry Mildmay, Mr. Holland, and Mr. Edwards, do take care for providing all provisions and necessaries for the King, during his Trial. That sir Henry Mildmay, Mr. Holland, and Mr. Edwards, do likewise take care for all necessaries for the Lord President."

Ordered, "That the Committee for considering of the manner of bringing the King to Trial, do consider what habits the officers of this Court shall have; who are to advise with some Heralds at Arms therein, and concerning the ordering of the said officers. That a sword be carried before the Lord President at the Trial of the King. That John Humphreys, esq. do bear the sword before the Lord President. That a mace, or maces, together with a sword, be likewise carried before the Lord President."

This Court doth adjourn itself to three of the clock in the afternoon.

Jan. 17, 1649. *Post Meridiem.*

Three Proclamations. The Court is cleared of strangers; and they sit private.

The Charge against the King is presented by the Counsel, and ordered to be recommitted to the Committee appointed for advice with the counsel concerning the Charge against the King, who are to contract the same, and fit it for the Court's proceeding thereupon, according to the act of parliament in that behalf. And the same committee are likewise to take care for the King's coming to Westminster to Trial, at such time as to them shall seem meet; and lieutenant general Cromwell is added to the said Committee. And the counsel are to attend this Court with the said Charge to-morrow at two o'clock in the afternoon. And thereupon,

Ordered, "That the Committee for considering of the manner of bringing the King to Trial do meet to-morrow morning, at eight o'clock, in the Exchequer Chamber."

The Court adjourned itself till the morrow at two o'clock in the afternoon, to the same place.

*Jovis, 18 Jan. 1649.*

Three Proclamations made.

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President of this Court.

Oliver Cromwell.	John Huson.
Edw. Whalley.	Tho. Pride.
T. Id. Grey of Grooby.	Wm. Cawley.
Sir John Danvers.	Henry Smith.
Sir T. Maleverer, bt.	Peter Temple.
Sir Hardress Waller.	Tho. Wogan.
John. Berkstead.	George Fleetwood.
John. Blackstone.	Francis Lassels.
Sir Wm. Constable.	Adrian Scroope.
John Hutchinson.	Peregrine Pelham.
Robert Tichbourne.	John Fry.
Cornelius Holland.	Sir Gregory Norton.
John Moor.	Humphrey Edwards.
Richard Deane.	John Venn.
John Okey.	Wm. Purefoy.
Tho. Hammond.	Simon Meyne.
John Carew.	John Brown.
Wm. lord Mounson.	Herbert Morley.

Here the Court sit private.

Col. Tichbourne, one of the commissioners of this Court, informeth the Court, That he was with Mr. Steel, Attorney of this Court, and found him in his bed very sick; and by reason thereof not like, as yet, to attend the service of this Court, according to former Order. And desired him, the said colonel, to signify, That he, the said Mr. Steel, no way declineth the service of the said Court, out of any dissatisfaction to it; but professeth himself to be so clear in the business, that if it should please God to restore him, he should manifest his good affection to the said cause; and that it is an addition to his affliction, that he cannot attend this Court, to do that service that they have expected from him, and as he desires to perform.

The Court adjourned itself till to-morrow, 2 o'clock in the afternoon.

*Veneris, 19 Jan. 1649.*

Three Proclamations. The Court called openly.

The Commissioners present.

John Bradshaw, Serjeant at Law, Lord President.

Henry Ireton.	Peregrine Pelham.
Sir Hard. Waller, kt.	Tho. Challoner.
Tho. Harrison.	Algernon Sidney.
Edw. Whalley.	Wm. Say.
Isaac Ewers.	Francis Lassels.
Wm. lord Mounson.	Henry Smith.
Sir John Danvers.	Humphrey Edwards.
Sir T. Maleverer, bt.	John Fry.
Sir J. Bourchier, kt.	Sir Greg. Norton, bt.
Wm. Heveningham.	John Dove.
Wm. Purefoy.	Tho. Scot.
John Berkstead.	Wm. Cawley.
John Blackstone.	Tho. Horton.

Gilbert Millington.	John Lisle.
John Hutchinson.	Nicholas Love.
Sir Mich. Livesey, kt.	Vincent Potter.
Robert Tichbourne.	John Dixwell.
Owen Rowe.	Simon Meyne.
Robert Lilbourne.	Peter Temple.
Adrian Scroope.	John Brown.
Richard Deane.	John Okey.
John Huson.	Wm. Goffe.
Cornelius Holland.	John Carew.
John Jones.	

Here the Court sat private.

Col. Hutchinson reporteth from the Committee appointed to consider of the Habits of the Officers; and it is thereupon ordered, "That three gowns be provided for three Ushers, and three clokes for three Messengers of this Court."

Mr. Millington reported from the committee for advice with the Counsel concerning the Charge against the King, that the Counsel have perfected the Charge, and are ready to present it. He likewise reporteth the Draught of an Order, whereby the Charge may, by the command of this Court, be exhibited, together with a Form of Words, the effect whereof the Committee think fit to be pronounced by him that this Court shall appoint so to exhibit the said Charge: which said Order and Form of Words the Court have with some Alterations agreed unto as followeth:

It is ordered, That Mr. Attorney, and in his absence Mr. Solicitor, do, in the behalf of the People of England, exhibit and bring into this Court a Charge of High Treason, and other High Crimes, against Charles Stuart king of England, and charge him thereupon in the behalf aforesaid.

The Form of Words are as followeth:

"My Lord;

"According to an Order of this High Court to me directed for that purpose, I do in the name and on the behalf of the people of England, exhibit and bring into this Court a Charge of High Treason, and other High Crimes, whereof I do accuse Charles Stuart, King of England, here present. And I do, in the name and on the behalf aforesaid, desire the said Charge may be received accordingly, and due Proceedings had thereupon."

The Counsel likewise, according to Mr. Millington's Report, presented a Draught of the Charge against the King; which was read the first, and second, and third time, and referred back to the said Counsel, to make some small Amendments as to the Form thereof.

Ordered, "That commissary general Ireton, col. Whalley, col. Harrison, sir Hardress Waller, or any two of them, do appoint the 30 persons that are by Order of the 17th instant to attend the King, and the 20 that are to attend the Lord President; and, That the Serjeant at Arms do secure Mr. Squibb's Gallery by such ways and means as he shall conceive meet."

The Court adjourned itself till nine of the clock to-morrow morning.

*Sabbati, 20 Jan. 1649.*

Three Proclamations, and attendance commanded.

Ordered, That sir Henry Mildmay be desired to deliver unto John Humphreys, esq. the Sword of State in his custody; which said sword the said Mr. Humphreys is to bear before the Lord President of this Court.

The Court being sat as aforesaid, before they engaged in further business, the Serjeant at Arms of the House of Commons came thither, and acquainted the Court, that the House wanted their Members that were of that Court; the Court thereupon adjourned till twelve of the clock the same day.

The Court accordingly met at twelve of the clock. Three Proclamations made.

Painted Chamber, 20 Jan. 1649.

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President of this Court.

Tho. lord Grey of Grooby.	Sir Michael Livesey,
Henry Marten.	Sir John Danvers,
Oliver Cromwell,	Mr. Millington,
Henry Ireton,	Sir Hardress Waller,
Augustine Garland,	John Blackistone,
Thomas Challoner,	John Huson,
Nicholas Love,	Humphrey Edwards,
William Cawley,	Isaac Pennington, ald.
John Venn,	of London.
William Purefoy,	John Brown,
John Berkstead,	Edward Whalley,
James Challoner,	John Okey,
Peter Temple,	Thomas Pride,
Thomas Harrison,	Adrian Scroope,
Robert Tichbourne,	Valentine Wauton,
John Hutchinson,	Thomas Hammond,
Sir Gregory Norton,	James Temple,
Sir T. Maleverer, bart.	Peregrine Pelham,
Daniel Blagrove,	Thomas Lister,
Owen Roe,	Edmund Ludlow,
Thomas Wogan,	Simon Meyne,
William Say,	Thomas Scott,
Francis Lassels,	Edmond Harvey,
John Jones,	Wm. lord Mounson,
Sir John Bourchier,	Henry Smith,
John Carew,	Sir Wm. Constable,
John Downes,	Isaac Ewers,
John Fry,	Sir Henry Mildmay,
	Anthony Stapely,

Here the Court sat private.

Ordered, "That the Form and Method of the Court's proceeding unto, and in the reading of the Commission by which they sit, sending for, and bringing in the Prisoner to the bar, acquainting him in brief with the cause of his bringing thither, receiving and reading the Charge, and demanding what the Prisoner says thereto, be referred to the discretion of the Lord President; as also, That in case the Prisoner shall in language or carriage towards the Court be insolent, outrageous, or contemptuous, that it be left to the Lord President to reprehend him thereof, and admonish him of his duty, or to command the taking away of the Prisoner; and if he see cause, to withdraw or

adjourn the Court. But as to the Prisoner's putting off his hat, the Court will not insist upon it for this day; and that if the King desire time to answer, the Lord President is to give him time."

Ordered, upon the Lord President's desire and motion, "That Mr. Lisle and Mr. Say, Commissioners of this Court, be assistants to the Lord President; and for that purpose, it is ordered, That they sit near the Lord President in Court."

Mr. Solicitor presented the Charge against the King ingrossed in parchment; which was read, and being by Mr. Solicitor signed, was returned to him to be exhibited against the King, in his presence in open Court. And thereupon the Court adjourned itself forthwith to the Great Hall in Westminster.

#### THE MANNER OF THE TRIAL OF CHARLES STUART, KING OF ENGLAND \*.

On Saturday, being the 20th day of January, 1649, the Lord President of the High

\* Kennet says, "Jan. 20. This execrable High Court of Justice met in Westminster-hall; and after reading the Ordinance, the Names of the Commissioners, as judges, were called over: every man answering to his name as he was called, and the President being first called and making answer, the next who was called being the General, lord Fairfax, and no answer being made, the officer called him the second time, when there was a voice heard that said, 'He had more wit than to be there,' which put the Court into some disorder; and somebody asking who it was? there was no other answer but a little murmuring. But presently when the Impeachment was read, and that expression used, 'Of all the good people 'of England,' the same voice, in a louder tone, answered, 'No, nor the hundredth part of them;' upon which one of the officers bid the soldiers give fire into that box from whence those presumptuous words were uttered. But it was quickly discerned that it was the General's wife, the lady Fairfax, who had uttered both those sharp sayings; who was presently persuaded or forced to leave the place to prevent any new disorder. Sixty seven commissioners answered to their names; and then the Court commanded the Serjeant at Arms to send for the Prisoner, who was brought up in the face of the Court by colonel Tomlinson, under a strong guard, and delivered to the Serjeant at Arms, who conducted him to the bar, where a crimson velvet chair was set before him."

Whitelocke says, "Some who sate on the scaffolds about the Court at the Trial (particularly the Lady Fairfax the Lord General's wife) did not forbear to exclaim aloud against the proceedings of the High Court, and the irreverent usage of the king by his subjects, inasmuch that the Court was interrupted, and the soldiers and officers of the Court had much to do to quiet the ladies and others," p. 366.

Lord Clarendon after relating this incident,

Court of Justice, his two assistants, and the rest of the Commissioners of the said Court, according to the adjournment of the said Court from the Painted Chamber, came to the bench, or place prepared for their sitting, at the West end of the Great Hall at Westminster; divers officers of the said court, one-and-twenty gentlemen with partizans, and a sword and mace, marching before them up into the Court, where the Lord President in a crimson velvet chair fixed in the midst of the Court, placed himself, having a desk with a crimson velvet cushion before him; the rest of the members placing themselves on each side of him, upon several seats or benches prepared, and hung with scarlet for that purpose. The Lord President's two assistants sitting next of each side of him, and the two Clerks of the Court placed at a table somewhat lower, and covered with a Turkey carpet; upon which table was also laid the sword and mace, the said guard of partizans dividing themselves on each side of the Court before them.

Three Proclamations are made, for all persons that were adjourned over thither, to draw near. The Court being thus sat, and silence enjoined, the great gate of the Hall was set open, to the intent that all persons, without exception, desirous to see or hear, might come unto it; upon which the Hall was presently filled, and silence again ordered and proclaimed. After silence proclaimed as aforesaid, the Act of the Commons of England assembled in Parliament, for erecting a High Court of Justice for trying and judging of Charles Stuart king of England, was openly read by one of the Clerks of the Court. The Act being read, the Court was called, every Commissioner present there-upon rising to his name.

*Westminster-Hall, Jan. 20, 1649.*

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President.

Oliver Cromwell,	Thomas Harrison,
Henry Ireton,	Edward Whalley,
Sir Hardress Waller,	Thomas Pride,
Valentine Wauton,	Isaac Ewer,
Th. I. Grey of Grooby,	Cornelius Holland,

says, that "Lady Fairfax was of a very noble extraction, one of the daughters and heirs of Horace lord Vere of Tilbury; who, having been bred in Holland, had not that reverence for the church of England, as she ought to have had, and so had unhappily concurred in her husband's entering into rebellion, never imagining what misery it would bring upon the kingdom; and now abhorred the work in hand as much as any body could do, and did all she could to hinder her husband from acting any part in it. Nor did he ever sit in that bloody Court, though he was throughout overwitted by Cromwell, and made a property to bring that to pass which could very hardly have been otherwise effected."

Wm. lord Mounson,  
 Sir John Danvers,  
 Sir Th. Maleverer, bt.  
 Sir John Bouchier, kt.  
 Isaac Pennington, Alderman of London,\*  
 Henry Martin,  
 William Purefoy,  
 John Berkstead,  
 John Blackiston,  
 Gihert Millington,  
 Sir Wm. Constable, bt.  
 Edmond Ludlow,  
 John Hutchinson,  
 Sir Mich. Livcsey, bt.  
 Robert Tichbourne,  
 Owen Roe,\*  
 Robert Lilbourne,\*  
 Adrian Scroope,  
 Thomas Horton,  
 Thomas Hammond,  
 John Lisle,  
 Nicholas Lore,  
 Vincent Potter,\*  
 Augustine Garland,  
 Richard Deane,  
 John Okey,  
 John Huson,  
 William Goffe,

John Carew,  
 John Jones,  
 Thomas Lister,  
 Peregrine Pelham,  
 Francis Allen,  
 Thomas Challoner,  
 John Moore,  
 William Say,  
 John Allured,  
 Francis Lassels,  
 Henry Smith,  
 James Challouer,  
 Humphry Edwards.  
 Gregory Clement,  
 John Fry,  
 Sir Greg. Norton, bt.  
 Edmond Harvey,  
 John Venn,  
 Thomas Scot,\*  
 William Cawley,  
 Anthony Stapeley,  
 John Downs,  
 John Dixwell,  
 Simeon Mayne,  
 James Temple,  
 Peter Temple,  
 Daniel Blagrove,  
 John Brown.

This done, the Court command the Serjeant at Arms to send for the Prisoner; and thereupon col. Thomlinson, who had the charge of the Prisoner, within a quarter of an hour's space brought him, attended by col. Hacker, and two-and-thirty officers with partizans, guarding him to the Court, his own servants immediately attending him.

Being thus brought up in the face of the Court, the Serjeant at Arms with his mace receives him, and conducts him strait to the bar, having a crimson velvet chair set before him. After a stern looking upon the Court, and the people in the galleries on each side of him, he places himself in the chair, not at all moving his hat, or otherwise shewing the least respect to the Court; but presently riseth up again, and turns about, looking downwards upon the guards placed on the left side, and on the multitude of spectators on the right side of the said great Hall: the guard that attended him, in the mean time dividing themselves on each side of the Court, and his own servants following him to the bar, stand on the left hand of the Prisoner.

The Prisoner having again placed himself in his chair, with his face towards the Court, and silence being again ordered and proclaimed, the Lord President in the name of the Court addressed himself to the Prisoner, acquainting him, That the Commons of England assembled in parliament, being deeply sensible of the evils and calamities that had been brought upon this nation, and of the innocent blood that had been spilt in it, which was fixed upon him as the principal author of it, had resolved to make in-

quisition for this blood; and according to the debt they did owe to God, to justice, the kingdom, and themselves, and according to that fundamental power that rested, and trust reposed in them by the people, other means failing through his default, had resolved to bring him to Trial and Judgment; and had therefore constituted that Court of Justice, before which he was then brought, where he was to hear his Charge, upon which the Court would proceed according to justice.

Hereupon Mr. Cook, Solicitor for the Commonwealth, standing within a bar, with the rest of the Counsel for the Commonwealth, on the right hand of the Prisoner, offered to speak; but the Prisoner having a staff in his hand, held it up, and softly laid it upon the said Mr. Cook's shoulder two or three times, bidding him hold. Nevertheless, the Lord President ordering him to go on, Mr. Cook did, according to the order of the Court to him directed, in the name and on the behalf of the people of England, exhibit a Charge of High Treason, and other High Crimes, and did therewith accuse the said Charles Stuart king of England; praying in the name and on the behalf aforesaid, that the Charge might be accordingly received and read, and due Proceedings had thereupon. And accordingly preferred a Charge in writing, which being received by the Court, and delivered to the Clerk of the Court, the Lord President, in the name of the Court, ordered it should be read.

But the King interrupting the reading of it, the Court notwithstanding commanded the Clerk to read it; acquainting the Prisoner, that if he had any thing to say after, the Court would hear him: whereupon the Clerk read the Charge, the tenor whereof is as followeth, viz.

**A CHARGE of HIGH-TREASON, and other High Crimes** exhibited to the High Court of Justice by John Cook, esq. Solicitor-General, appointed by the said Court, for and on the behalf of the People of England, against CHARLES STUART King of England.

‘That he the said Charles Stuart being admitted King of England, and therein trusted with a limited power to govern by and according to the laws of the land, and not otherwise; and by his trust, oath and office, being obliged to use the power committed to him, for the good and benefit of the people, and for the preservation of their rights and liberties: yet nevertheless, out of wicked design to erect and uphold in himself an unlimited and tyrannical power to rule according to his will, and to overthrow the rights and liberties of the people; yea, to take away and make void the foundations thereof and of all redress and remedy of misgovernment, which by the fundamental constitutions of this kingdom were reserved on the people's behalf, in the right and power of frequent and successive parliaments or national meetings in council; he the said Charles Stuart, for accomplishment of

\* See the Trials of the Regicides, *infra*.

such his designs, and for the protecting of himself and his adherents in his and their wicked practices, to the same ends, hath traitorously and maliciously levied War against the present parliament, and the people therein represented. Particularly, upon or about the thirtieth day of June, in the year of our Lord 1642, at Beverly in the county of York; and upon or about the 30th day of July in the year aforesaid, in the county of the city of York; and upon or about the 24th day of August in the same year, at the county of the town of Nottingham, where and when he set up his standard of war; and also on or about the 23d day of October, in the same year, at Edge-hill and Keynton-field, in the county of Warwick; and upon or about the 30th day of November in the same year, at Brentford in the county of Middlesex; and upon or about the 30th day of August, in the year of our Lord 1643, at Caversham-Bridge near Reading, in the county of Berks; and upon or about the 30th day of October in the year last mentioned, at or near the city of Gloucester; and upon or about the 30th day of November in the year last mentioned at Newbury in the county of Berks; and upon or about the 31st day of July, in the year of our Lord 1644, at Cropredy-Bridge, in the county of Oxon; and upon or about the 30th day of September in the last year mentioned, at Bodmyn and other places near adjacent in the county of Cornwall; and upon or about the 30th day of November in the year last mentioned, at Newbury aforesaid; and upon or about the 8th day of June, in the year of our Lord 1645, at the town of Leicester; and also upon the 14th day of the same month in the same year, at Naseby-Field in the county of Northampton: at which several times and places, or most of them, and at many other places in this land, at several other times within the years afore-mentioned, and in the year 1646, he the said Charles Stuart hath caused and procured many thousands of the free people of this nation to be slain; and by divisions, parties, and insurrections within this land, by invasions from foreign parts, endeavoured and procured by him, and by many other evil ways and means, he the said Charles Stuart hath not only maintained and carried on the said war both by land and sea, during the years before mentioned, but also hath renewed or caused to be renewed the said war against the parliament and good people of this nation, in this present year 1648, in the counties of Kent, Essex, Surrey, Sussex, Middlesex, and many other places of England and Wales; and also by sea. And particularly, he the said Charles Stuart hath for that purpose given commission to his son the Prince, and others; whereby, besides multitudes of other persons, many such as were by the parliament intrusted and employed for the safety of the nation, (being by him or his agents corrupted to the betraying of their trust, and revolting from the parliament) have had enter-

tainment and commission for the continuing and renewing of war and hostility against the said parliament and people as aforesaid. By which cruel and unnatural wars by him the said Charles Stuart levied, continued and renewed as aforesaid, much innocent blood of the free people of this nation hath been spilt, many families have been undone, the public treasury wasted and exhausted, trade obstructed and miserably decayed, vast expence and damage to the nation incurred, and many parts of this land spoiled, some of them even to desolation. And for further prosecution of his said evil designs, he the said Charles Stuart doth still continue his commissions to the said Prince and other rebels and revolvers both English and foreigners, and to the earl of Ormond, and to the Irish rebels and revolvers associated with him; from whom further invasions upon this land are threatened, upon the procurement and on the behalf of the said Charles Stuart.

All which wicked designs, wars and evil practices of him the said Charles Stuart, have been and are carried on for the advancement and upholding of a personal interest of will and power, and pretended prerogative to himself and his family, against the public interest, common right, liberty, justice and peace of the people of this nation, by and for whom he was intrusted as aforesaid.

By all which it appeareth, that he the said Charles Stuart hath been, and is the occasioner, author, and continuer of the said unnatural, cruel and bloody wars, and therein guilty of all the treasons, murders, rapines, burnings, spoils, desolations, damages and mischiefs to this nation acted and committed in the said wars, or occasioned thereby.

And the said John Cook by protestation saving, on the behalf of the said people of England, the liberty of exhibiting at any time hereafter any other charge against the said Charles Stuart, and also of replying to the answers which the said Charles Stuart shall make to the premises, or any of them, or any other charge that shall be so exhibited; doth for the said Treasons and Crimes, on the behalf of the said people of England, impeach the said Charles Stuart, as a Tyrant, Traitor, Murderer, and a public and implacable Enemy to the Commonwealth of England; and pray that the said Charles Stuart, King of England, may be put to answer all and every the premises; and that such proceedings, examinations, trials, sentences and judgments may be thereupon had, as shall be agreeable to justice. (Subscribed) JOHN COOK.

The Prisoner, while the Charge was reading, sat down in his chair, looking sometimes on the High-Court, and sometimes on the Galleries; and rose again, and turned about to behold the guard and spectators, and after sat down, looking very sternerly, and with a countenance not at all moved, till these words, viz. Charles Stuart to be a Tyrant, Traitor, &c.

were read; at which he laughed, as he sat, in the face of the Court.

The Charge being read, the Lord President, in the name of the Court, demanded the Prisoner's Answer thereto.

But the Prisoner declining that, fell into a discourse of the late Treaty in the Isle of Wight, and demanded, by what lawful authority he was brought from the Isle thither? Upbraiding the Court with the many unlawful Authorities in the world, instancing in robbers and takers of purses; pleading his Kingship, and thereby a trust committed to him by God by descent, which he should betray, together with the Liberties of the People, in case he should answer to an unlawful power, which he charged the Court to be, and that they were raised by an Usurped Power: and affirmed, that he stood more for the liberties of the People, than any of the Judges there sitting: and again demanded, by what authority he was brought thither?

To which it was replied by the Court, That had he been pleased to have observed what was declared to him by the Court at his first coming, and the Charge which he had heard read unto him, he might have informed himself by what authority he was brought before them; namely, by the Authority of the Commons of England assembled in parliament, on the behalf of the people of England: and did therefore again several times advise him to consider of a better Answer: which he refused to do, but persisted in his contumacy. Whereupon the Court at length told him, That they did expect from him a positive Answer to the Charge; affirming their authority, and giving him to understand, that they were upon God's and the Kingdom's Errand, and that the peace stood for would be better had and kept when justice was done, and that was their present work: and advised him seriously to consider what he had to do at his next appearance; which was declared should be upon Monday following, and so remanded him to his former custody.

The Prisoner all the time having kept on his hat, departed, without shewing any the least respect to the Court: but going out of the bar, said 'He did not fear that Bill;' pointing to the table where the Sword and Charge lay.

The Prisoner being withdrawn, three Proclamations were made, and the Court adjourned itself to the Painted Chamber on Monday morning then next at nine of the clock; declaring, that from thence they intended to adjourn to the same place again.

*[But that the Reader may have the intire Relation of this deplorable Tragedy, I have from the most Authentic Prints inserted at large the interlocutory Passages between the King and Bradshaw, of which Mr. Phelps in his Journal gives only a succinct Account; which take as follows]*

His Majesty with his wonted patience heard all these slanders and reproaches, sitting in the Chair, and looking sometimes on the pretended Court; sometimes up to the Galleries;

and rising again, turned about to behold the Guards and Spectators: then he sat down, with a majestic and unmoved countenance, and sometimes smiling, especially at those words, 'Tyrant, Traitor,' and the like.

Also the silver head of his staff happened to fall off, at which he wondered: and seeing none to take it up, he stooped for it himself.

The Charge being read,

Bradshaw began: Sir, You have now heard your Charge read, containing such matters as appear in it; you find, that in the close of it, it is prayed to the Court, in the behalf of the Commons of England, that you answer to your Charge. The Court expects your Answer.

King. I would know by what power I am called hither; I was not long ago in the Isle of Wight; how I came there, is a longer story than I think is fit at this time for me to speak of; but there I entered into a Treaty with both houses of Parliament, with as much public faith as it is possible to be had of any people in the world. I treated there with a number of honourable Lords and Gentlemen, and treated honestly and uprightly; I cannot say but they did very nobly with me, we were upon a conclusion of the Treaty. Now I would know by what authority, I mean lawful; there are many unlawful Authorities in the world; Thieves and Robbers by the highways; but I would know by what authority I was brought from thence, and carried from place to place, and I know not what: and when I know by what lawful authority, I shall answer. Remember I am your King, your lawful King, and what sins you bring upon your heads, and the judgment of God upon this Land; think well upon it, I say, think well upon it, before you go further from one sin to a greater: therefore let me know by what lawful Authority I am seated here, and I shall not be unwilling to answer. In the mean time I shall not betray my trust; I have a trust committed to me by God, by old and lawful descent, I will not betray it, to answer to a new unlawful Authority: therefore resolve me that, and you shall hear more of me.

Bradshaw. If you had been pleased to have observed what was hinted to you by the Court, at your first coming hither, you would have known by what Authority; which Authority requires you, in the name of the people of England, of which you are elected King, to answer.

King. No, Sir, I deny that.

Bradshaw. If you acknowledge not the Authority of the Court, they must proceed.

King. I do tell them so, England was never an elective kingdom, but an Hereditary Kingdom for near these thousand years: therefore let me know by what authority I am called hither: I do stand more for the Liberty of my People than any here that come to be my pretended Judges: and therefore let me know by what lawful Authority I am seated here, and I will answer it, otherwise I will not answer it.

Bradshaw. Sir, How well you have managed your trust, is known: your way of Answer is to interrogate the Court, which becoms not you

in this condition. You have been told of it twice or thrice.

*King.* Here is a gentleman, lieutenant-col. Cobbet; ask him, if he did not bring me from the Isle of Wight by force. I do not come here as submitting to the Court: I will stand as much for the Privilege of the House of Commons, rightly understood, as any man here whatsoever. I see no House of Lords here, that may constitute a Parliament; and the King too should have been. Is this the bringing of the King to his Parliament? Is this the bringing an end to the Treaty in the public faith of the world? Let me see a legal Authority warranted by the Word of God the Scriptures, or warranted by the Constitutions of the Kingdom, and I will answer.

*Bradshaw.* Sir, you have propounded a question, and have been answered. Seeing you will not answer, the Court will consider how to proceed: in the mean time, those that brought you hither, are to take charge of you back again. The Court desires to know, whether this be all the Answer you will give, or no.

*King.* Sir, I desire that you would give me, and all the world, satisfaction in this; let me tell you, it is not a slight thing you are about. I am sworn to keep the peace, by that duty I owe to God and my country, and I will do it to the last breath of my body; and therefore you shall do well to satisfy first God, and then the country, by what authority you do it: if you do it by an usurped authority, you cannot answer it. There is a God in heaven, that will call you, and all that give you power, to account. Satisfy me in that, and I will answer; otherwise I betray my trust, and the Liberties of the People: and therefore think of that, and then I shall be willing. For I do avow, that it is as great a sin to withstand lawful authority, as it is to submit to a tyrannical or any other ways unlawful authority: and therefore satisfy God and me, and all the world in that, and you shall receive my Answer. I am not afraid of that Bill.

*Bradshaw.* The Court expects you should give them a final Answer, their purpose is to adjourn to Monday next: if you do not satisfy yourself, though we do tell you our authority; we are satisfied with our authority, and it is upon God's authority and the kingdom's, and that peace you speak of will be kept in the doing of justice, and that is our present work.

*King.* For answer, let me tell you, you have shewn no lawful authority to satisfy any reasonable man.

*Bradshaw.* That is in your apprehension; we are satisfied that are your Judges.

*King.* It is not my apprehension, nor yours neither, that ought to decide it.

*Bradshaw.* The Court hath heard you, and you are to be disposed of as they have commanded.

So commanding the Guard to take him away, his majesty only replied, 'Well, Sir!' And at his going down, pointing with his Staff towards

the Sword\*, he said, 'I do not fear that.' As he went down the stairs, the people in the hall cried out, 'God save the King!' notwithstanding some were set there by the faction to lead the clamour for justice. [Nelson].

*Painted Chamber, 22 Jan. 1649 †.*

Commissioners present :

\* It is Bill in Phelps's Journal: which Bill was the Charge, and lay near the Sword of State.

† "On this day the Commissioners from the Estates of the Parliament of Scotland, residing in London, having received no Answer to their Letter sent the 6th, to the Speaker of the house of commons, on occasion of the Act for erecting a High Court of Justice for the Trial of the King; they this day sent a second Letter in which was enclosed the following Protestation :

" 'By our Letter of the 6th instant, we represented unto you what endeavours have been used for taking away his majesty's life; for change of the fundamental government of this kingdom; and introducing a sinful and ungodly toleration in matters of Religion: and therein we did express our sad thoughts and great fears of the dangerous consequences that might follow thereupon; and, further, we did earnestly press, that there might be no proceeding against his majesty's person; which would certainly continue the great distractions of these kingdoms, and involve us in many evils, troubles, and confusions; but that, by the free councils of both houses of the parliament of England, with the advice and consent of the parliament of Scotland, such course might be taken in relation to him, as might be for the good and happiness of these kingdoms, both having an unquestionable and undeniable interest in his person as king of both; which, duly considered, we had reason to hope should have given a stop to all proceedings against his majesty's person.

— But we understand that, after many of the members of the house of commons have been imprisoned, and secluded; and also without and against the consent of the house of peers, power is given, by a single act of yours alone, to certain persons of your own number, of the Army, and others, to proceed against his majesty's person; in order whereunto he was brought, upon Saturday last in the afternoon, before this new extraordinary court: Therefore we do, in the name of the parliament of Scotland, for their vindication from false aspersions and calumnies, declare, That though they are not satisfied with his majesty's Concessions in the late Treaty at Newport, especially in the matters of Religion: and are resolved not to crave his majesty's restitution to his government, before Satisfaction be given by him to his kingdoms; yet they do all unanimously, with one voice (not one member excepted) disclaim the least knowledge of, or assention to, the late proceedings of the

John Bradshaw. Serjeant at Law, Lord President of this Court.

Wm. Say.	Sir Tho. Maleverer, bt.
John Downs.	Valentine Wauton.
Edw. Whalley.	Peter Temple.
Francis Allen.	John Fry.

'Army here against his majesty; and sincerely profess, that it will be a great grief unto their hearts, and lie heavy upon their spirits, if they shall see their trusting of his majesty's person to the honourable houses of the parliament of England, to be made use of to his ruin; so far contrary to the declared intentions of the kingdom of Scotland, and the solemn professions of the kingdom of England. —And to the end it may be manifest to the world, how much they abominate and detest so horrid a design against his majesty's person, we do, in the name of the parliament and kingdom of Scotland, hereby declare their Dissent from the said proceedings, and the taking away his majesty's Life; and protest, That as they are altogether free from the same, so they may be free from all the evils, miseries, confusions and calamities, that may follow thereupon to these distracted kingdoms.

LOTHIAN. JO. CHIESLEY.

Jan. 22.

WILL. GLENDINNING.

"The foregoing Paper, &c. being read, the house ordered, That they should all be referred to a committee, who were to prepare an Answer thereto, and to consider of fit persons to be sent to the parliament of Scotland. These Papers were also presented to the Lord-General.

"Feb. 12. Letters came this day from Edinburgh, advising that Prince Charles was proclaimed King of Scotland by the whole parliament there, with great solemnity.

"Feb. 24. It has been already observed, that the parliament of Scotland had proclaimed Prince Charles for their king, and sent a deputation to inform him of it; and that the house had since published their Answer to the Scots Commissioners Letters, presented in January last. This day those Commissioners sent another Paper, directed to the Speaker, which is not given us in the Journals. Mr. Whitelocke tells us, 'That the Speaker acquainted the house this day with a Letter the Scots Commissioners sent him, at their going away, which was without taking leave.' And adds, 'It was full of bitterness against the parliament and their late proceedings against the king, the house of lords, and the secluded Members.'—How highly the commons were affronted at this Remonstrance sufficiently appears from the following Declaration, passed on the 20th of this month; which they ordered to be forthwith printed and published.

"The parliament having received a Paper, dated February 24, subscribed by the earl of Lothian, sir John Chiesley, and Mr. Glendinning, in the name of the kingdom of Scotland, and taking the same into their serious consideration: they do declare, That the said

Tho. Soot.

Henry Smith.

Tho. Pride.

Augustine Garland.

John Venn.

Sir John Bourchier.

Wm. Porefoy.

Sir W. Constable, bt.

Isaac Pennington, alderman of London.

Tho. Harrison.

Edm. Harvey.

John Hutchinson.

Oliver Cromwell.

T. Id. Gréy of Grooby.

Sir Greg. Norton, bt.

Robert Wallop.

James Temple.

Owen Roe.

Richard Deane.

Wm. Goffe.

Francis Lassells.

Edm. Ludlow.

Wm. Cawley.

Gilbert Milington.

Sir Hardress Waller.

Anthony Stapeley.

John Jones.

Nicholas Love.

John Carew.

Tho. Andrews, alderman of London.

Isaac Ewer.

John Huson.

Cornelius Holland.

Humphrey Edwards.

'Paper doth contain much scandalous and reproachful matter against the just proceedings of this parliament; and an assuming on the behalf of that kingdom, to have a power over the laws and government of this nation, to the high dishonour thereof; and lastly, a design in the contrivers and subscribers of it, to raise sedition and lay the grounds of a new and bloody war in this land; that, under the specious pretences in that Paper contained, they may gain advantages to second their late perfidious invasion. And it is further declared, That all persons whatsoever, residing in England or Ireland, or the dominions thereof, that shall join with, or adhere unto, or voluntarily aid or assist, the said contrivers and Subscribers, or any whosoever of the kingdom of Scotland, in pursuance of the grounds by them laid in the same Paper, for raising sedition and a new and bloody war in this land, are rebels and traitors to the Commonwealth of England; and shall be proceeded against as traitors and rebels.

H. SCOBELL, Cler. Par.'

"Besides publishing this Declaration, the house ordered, That the Commissioners should have a guard set upon their lodging, to secure them from violence; and also to restrain them from communication with any by whom the sedition, contained in their Paper, might be promulged: and that none be suffered to have access to them, or to pass out from them, but for their supply with necessities during their abode here. It was also ordered, That a message with a duplicate of the foregoing Remonstrance, be sent to the parliament and kingdom of Scotland, To know whether they do or will own and justify what hath been presented to this parliament in their names.

"Feb. 28. In consequence of the above Orders, the commons were this day informed that the Scots Commissioners had been apprehended at Gravesend, as they were embarking on their return home, and were now under a guard: hereupon, it being put to the question, Whether to send them back to Scotland by land, so guarded? it passed in the affirmative." S Cobb. Parl. Hist. p. 1277.

Vincent Potter.	Adrian Scroope.
John Okey.	John Dixwell.
John Blackistone.	John Moore.
Tho. Hammond.	Robert Tichbourne.
Daniel Blagrove.	James Challoner.
Wm. Heveningham.	Gregory Clement.
Sir Michael Livesey.	Wm. lord Mounson.
John Berkstead.	Henry Martin.
Peregrine Pelham.	Tho. Challoner.
John Downes.	

Sixty-two Commissioners present.

Here the Court sit private.

Ordered, That the Committee for nominating the Officers of this Court, together with the Committee for nominating the Guards, do consider of an allowance for Diet of the Officers, and what other satisfaction they shall have for their service.

Col. Harvey informed the Court, That he was desired to signify unto this Court, in the behalf of Mr. John Corbet, member of this Court, that his absence is not from any dissatisfaction to the proceedings of this Court, but in regard of other especial employment that he hath in the service of the state.

Here the Court considered of the King's carriage on the Saturday before, and of all that had then passed on the Court's behalf, and approved thereof, as agreeing to their sense and direction. And perceiving what the king aimed at, viz. to bring in question, if he could, the jurisdiction of the Court, and the authority whereby they sat; and considering that he had not in the interim acknowledged them in any sort to be a Court, or in any judicial capacity to determine of his demand and plea, and that through their sides he intended to wound, if he might be permitted, the supreme authority of the commons of England, in their representative, the commons assembled in parliament; after advice with their Counsel learned in both Laws, and mature deliberation had of the matter,

Resolved, That the Prisoner should not be suffered to bring these things in question which he aimed at, touching that Highest Jurisdiction; whereof they might not make themselves Judges, and from which there was no Appeal. And therefore order and direct, viz.

Ordered, That in case the King shall again offer to fall into that discourse, the Lord President do let him know, That the Court have taken into consideration his demands of the last day, and that he ought to rest satisfied with this Answer, 'That the Commons of England assembled in Parliament have constituted this Court, whose power may not, nor should be permitted to be disputed by him, and that they were resolved he should answer his Charge.'—That in case he shall refuse to answer, or acknowledge the Court, the Lord President do let him know, that the Court will take it as a Contumacy, and that it shall so be recorded.—That in case he shall offer to answer with a Saving, notwithstanding of his pretended prerogative, that the Lord President do

in the name of the Court refuse his Protest, and require his positive Answer to the Charge. That in case the king shall demand a copy of the Charge, that he shall then declare his intention to answer; and that declaring such his intention, a copy be granted unto him. That in case the king shall still persist in his contempt, the Lord President do give command to the Clerk to demand of the King in the name of the Court, in these words following, viz.

'Charles Stuart, king of England, you are accused in behalf of the People of England of divers High Crimes and Treasons, which Charge hath been read unto you; the Court requires you to give a positive Answer, whether you confess or deny the Charge; having determined, that you ought to answer the same.'

Ordered, That the Commissioners shall be called in open Court, at the Court's sitting in the Hall, and that the names of such as shall appear shall be recorded.

Hereupon the Court forthwith adjourned itself into Westminster Hall.

*Westminster Hall, 22 Jan. 1649.*

*Post Meridien.*

The Commissioners coming from the Painted Chamber, take their place in the public Court, in Westminster Hall, as on Saturday before; and being sat, and the Hall door set open, three Proclamations were made for all persons that were adjourned over to this time, to give their attendance, and for all persons to keep silence, upon pain of imprisonment: the Court is thereupon called.

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President of this Court.

William Say	Henry Smith
John Lisle	James Challoner
Oliver Cromwell	Gregory Clement
Henry Ireton	John Fry
Sir Hardress Waller	Thomas Wogan
Valentine Wauton	Peter Temple
Thomas Harrison	Robert Wallop
Edward Whalley	Wm. Heveningham
Thomas Pride	Isaac Pennington, ald.
Isaac Ewers	of London
T. Id. Grey of Grooby	Henry Martin
Wm. lord Mounson	Wm. Purefoy
Sir John Danvers	John Berkstead
Sir T. Maleverer, bt.	Wm. Tomlinson
Sir John Bourchier, kt.	John Blackistone
Edmund Ludlow	Gilbert Millington
John Huson	Sir W. Constable, bt.
Wm. Goffe	Sir M. Livesey, bt.
Cornelius Holland	Robert Tichbourne
John Carew	Owen Rowe
Robert Lilbourne	Adrian Scroope
John Jones	John Deane
Francis Allen	John Okey
Peregrine Pelham	John Hutchinson
Thomas Challoner	Sir G. Norton, bt.
John Moore	Edmond Harvey
John Allured	John Venn
Francis Lassels	Thomas Scott

Thos. Andrews, alder-	Vincent Potter
man of London	Sir G. Pickering, bart.
Wm. Cawley	Augustine Garland
Anthony Stapeley	John Dixwell
John Downs	James Temple
Thos. Horton	Daniel Blagrove
Thos. Hammond	Humphrey Edwards
Nicholas Love	

Seventy Commissioners present.

The Court being called, the Serjeant is commanded to fetch his Prisoner.

The King is again brought Prisoner to the bar, as on Saturday before; proclamation is made for silence, whilst pleas of the commonwealth were in hand, and order given to the Captain of the Guard to take into his custody such as should disturb the Court.

Mr. Solicitor moved the Court, that the Prisoner might give a positive Answer to his Charge, or otherwise that the Court would take the matter of it *pro confesso*, and proceed thereupon according to justice. Which being pressed by the Court upon the Prisoner, and their Judgment again made known unto him, That he was to answer his Charge, otherwise his contumacy would be recorded:

The Prisoner, notwithstanding, still insisted upon his former Plea, and that the Court had no power, nor the Commons of England, who had constituted it, to proceed against him. Upon which the Clerk of the Court, by command, and according to former order, required his Answer in the form prescribed; and the Prisoner still refusing to submit thereto, his default and contempt were again recorded, the Prisoner remanded, and the Court adjourned itself to the next day, being Tuesday, at twelve of the clock, to the Painted Chamber; withal giving notice, That from thence they intended to adjourn to this place again.

[Sunday having been spent in Fasting and seditious Preaching, according to the mode of these impious Hypocrites, who used to preface Rebellion and Murder with the appearance of Religion, the illustrious Sufferer was (as is before in Phelps's Journal related) placed before the infamous Tribunal, where their mercenary Solicitor Cook opened the tragic scene, thus displaying his talents of impudence and treason.] *Nelson.*

*Cook.* May it please your lordship, my Lord President; I did at the last Court, in the behalf of the Commons of England, exhibit and give into this Court a Charge of High Treason, and other High Crimes against the Prisoner at the Bar; whereof I do accuse him in the name of the People of England; and the Charge was read unto him, and his Answer required. My Lord, he was not pleased to give an Answer, but instead of answering, did there dispute the Authority of this High Court. My humble motion to this High Court, in the behalf of the kingdom of England, is, That the Prisoner may be directed to make a positive Answer, either by way of Confession or Negation; which if he shall refuse to do, that then the

matter of Charge may be taken *pro confesso*, and the Court may proceed according to justice.

*Bradshaw.* Sir, you may remember, at the last Court you were told the occasion of your being brought hither, and you heard a Charge read against you, containing a Charge of High Treason and other High Crimes against this realm of England: you heard likewise, that it was prayed, in the behalf of the people, that you should give an Answer to that Charge, that thereupon such Proceedings might be had as should be agreeable to Justice. You were then pleased to make some scruples concerning the Authority of this Court, and knew not by what Authority you are brought hither: you did divers times propound your Questions, and were as often answered, That it was by Authority of the Commons of England, assembled in Parliament, that did think fit to call you to account for those high and capital Misdemeanours wherewith you were then charged. Since that, the Court hath taken into consideration what you then said; they are fully satisfied with their own Authority, and they hold it fit you should stand satisfied with it too; and they do require it, that you do give a positive and particular Answer to this Charge that is exhibited against you: they do expect you should either confess or deny it; if you deny, it is offered, in the behalf of the kingdom, to be made good against you; their Authority they do avow to the whole world, that the whole Kingdom are to rest satisfied in, and you are to rest satisfied with it. And therefore you are to lose no more time, but to give a positive Answer thereunto.

*King.* When I was here last, 'tis very true, I made that Question; and if it were only my own particular case, I would have satisfied myself with the Protestation I made the last time I was here against the legality of this Court, and that a King cannot be tried by any superior jurisdiction on earth: but it is not my case alone, it is the Freedom and the Liberty of the People of England; and do you pretend what you will, I stand more for their Liberties. For if Power without Law may make Laws, may alter the Fundamental Laws of the Kingdom, I do not know what subject he is in England that can be sure of his life, or any thing that he calls his own: therefore when that I came here, I did expect particular Reasons to know by what Law, what Authority you did proceed against me here. And therefore I am a little to seek what to say to you in this particular, because the Affirmative is to be proved, the Negative often is very hard to do. But since I cannot persuade you to do it, I shall tell you my Reasons as short as I can.

My Reasons why in conscience and the duty I owe to God first, and my People next, for the preservation of their Lives, Liberties and Estates, I conceive I cannot answer this, till I be satisfied of the legality of it. All Proceedings against any man whatsoever—

*Bradshaw.* Sir, I must interrupt you, which

I would not do, but that what you do is not agreeable to the Proceedings of any Court of Justice: You are about to enter into argument, and dispute concerning the Authority of this Court, before whom you appear as a Prisoner, and are charged as an high Delinquent; if you take upon you to dispute the Authority of the Court, we may not do it, nor will any Court give way unto it: you are to submit unto it; you are to give a punctual and direct Answer, whether you will answer your Charge or no, and what your Answer is.

*King.* Sir, by your favour, I do not know the Forms of Law; I do know Law and Reason, though I am no lawyer professed, but I know as much law as any gentleman in England: and therefore (under favour) I do plead for the Liberties of the People of England more than you do: And therefore if I should impose a belief upon any man, without Reasons given for it, it were unreasonable; but I must tell you, that by that Reason that I have, as thus informed, I cannot yield unto it.

*Bradshaw.* Sir, I must interrupt you, you may not be permitted: you speak of Law and Reason, it is fit there should be Law and Reason, and there is both against you. Sir, the Vote of the Commons of England assembled in Parliament, it is the Reason of the kingdom, and they are these too that have given that law, according to which you should have ruled and reigned. Sir, you are not to dispute our Authority, you are told it again by the Court. Sir, it will be taken notice of, that you stand in contempt of the Court, and your Contempt will be recorded accordingly.

*King.* I do not know how a King can be a Delinquent; but by any law that ever I heard of, all men (Delinquents, or what you will) let me tell you they may put in Demurrers against any Proceeding as legal: and I do demand that, and demand to be heard with my Reasons; if you deny that, you deny Reason.

*Bradshaw.* Sir, you have offered something to the Court; I shall speak something unto you, the Sense of the Court. Sir, neither you nor any man are permitted to dispute that point; you are concluded, you may not demur to the Jurisdiction of the Court; if you do, I must let you know, that they over-rule your Demurrer; they sit here by the Authority of the Commons of England, and all your predecessors and you are responsible to them.

*King.* I deny that; shew me one Precedent.

*Bradshaw.* Sir, you ought not to interrupt while the Court is speaking to you. The point is not to be debated by you, neither will the Court permit you to do it; if you offer it by way of Demurrer to the Jurisdiction of the Court, they have considered of their Jurisdiction, they do affirm their own Jurisdiction.

*King.* I say, Sir, by your favour, that the Commons of England was never a Court of Judicature; I would know how they came to be so.

*Bradshaw.* Sir, you are not to be per-

mitted to go on in that Speech and these Discourses.

Then the Clerk of the Court read,  
'Charles Stuart, King of England, You have been accused on the behalf of the People of England of High Treason, and other High Crimes; the Court have determined that you ought to answer the same.'

*King.* I will answer the same, so soon as I know by what authority you do this.

*Bradshaw.* If this be all that you will say, then, Gentlemen, you that brought the Prisoner hither, take charge of him back again.

*King.* I do require that I may give in my Reasons why I do not answer, and give me time for that.

*Bradshaw.* Sir, 'tis not for Prisoners to require.

*King.* Prisoners! Sir, I am not an ordinary Prisoner.

*Bradshaw.* The Court hath considered of their Jurisdiction, and they have already affirmed their Jurisdiction; if you will not answer, we will give order to record your Default.

*King.* You never heard my Reason yet.

*Bradshaw.* Sir, your Reasons are not to be heard against the highest Jurisdiction.

*King.* Shew me that Jurisdiction where Reason is not to be heard.

*Bradshaw.* Sir, we shew it you here, the Commons of England; and the next time you are brought, you will know more of the pleasure of the Court; and it may be, their final determination.

*King.* Shew me where ever the House of Commons was a Court of Judicature of that kind.

*Bradshaw.* Serjeant, take away the Prisoner.

*King.* Well, Sir, remember that the King is not suffered to give in his Reasons for the Liberty and Freedom of all his Subjects.

*Bradshaw.* Sir, you are not to have liberty to use this Language: how great a friend you have been to the Laws and Liberties of the People, let all England and the world judge.

*King.* Sir, under favour, it was the Liberty, Freedom, and Laws of the Subject, that ever I took—defended myself with Arms; I never took up Arms against the People, but for the Laws.

*Bradshaw.* The command of the Court must be obeyed; no Answer will be given to the Charge.

*King.* Well, Sir!

Then Bradshaw ordered the Default to be recorded, and the Contempt of the Court; and that no Answer would be given to the Charge.

The king was guarded forth to sir Robert Cotton's house.

The Court adjourned to the Painted Chamber on Tuesday at twelve of the clock, and from thence they intend to adjourn to Westminster-hall; at which times all persons concerned are to give their attendance.

[His Majesty not being suffered to deliver his

Reasons\* against the Jurisdiction of their pretended Court, by word of mouth, thought fit to leave them in Writing to the more impartial judgment of posterity, as followeth:—]

‘ Having already made my Protestations, not  
‘ only against the illegality of this pretended

‘ Court, but also, That no earthly power can  
‘ justly call me (who am your king) in ques-  
‘ tion, as a Delinquent; I would not any more  
‘ open my mouth upon this occasion, more  
‘ than to refer myself to what I have spoken,  
‘ were I in this case alone concerned : but the

\* These Reasons are abridged in Rapin’s History of England, and accompanied by the following Passages relating to this Trial :

I. “ The high court of justice observed the same rules in trying the king, as in judging a common malefactor, there being no precedent of such a trial.

II. “ The principal article of the accusation was, that the king had levied war against the parliament, which was undeniable. The sieges and battles were evident proofs of it. But this ought not to have been the principal point. It should have been proved, that he was the beginner and author of the war. For it is manifest, if the war had been only defensive on his part, he was not to be blamed. And yet, in the charge, he was supposed to have put the parliament under a necessity of defending themselves, and this point, which was the chief, not only was not proved, but even not attempted to be so. The depositions of the witnesses tended not to shew, that the king had forced the parliament to take up arms, but only that he had been seen sword in hand against the parliament, and giving orders to levy war. The question, which of the two, the king or the parliament, had began the war, ought to have been fully cleared. But though it had been so to the king’s disadvantage, who does not know, that the beginner of a war, is not always the aggressor? This was a point of great discussion, and which impartial judges would have found difficult to decide. For if what has been said in the history of this reign be remembered, it will be observed, that though it is evident the king governed in an arbitrary manner for some years, the ground of the war he undertook, was not in maintenance of this arbitrary power. He had fully consented to the annulling of his usurpations. But the ground of the war, on his part, was the defence of the power the king enjoys by the laws of the land. On the parliament’s side, the ground of the war was, That in a supposition the king could not be trusted any more, they would have divested him of the power his legal prerogatives afforded him to return to his former courses, and govern for the future as he had governed before. The king was unwilling to be curbed, and the parliament would set bounds to his power. This was the true ground of the war. It was not therefore easy to determine who was the first author of it. The king refused to give other security for the future than his word; and the parliament pretended to have very strong reasons to suspect the word of a prince, who had so often broke it. To determine on which side justice and reason lay, the king’s heart must have been dived into, to know whether he was sincere,

or intended to deceive the parliament. On the other hand, it was necessary to know, whether the directors of the parliament had not some other end than the public good, and whether private interests were not concealed under that pretence. But all these things could be known only to God. And yet, the parliament, being judge and party, supposed, without alledging any proof, that the king was the aggressor and sole author of the war.

III. “ There are frequent instances in history of kings assassinated by their subjects in consequence either of the public hatred, or of private revenge, or of the interest of some faction. The English history furnishes, even since the conquest, examples of two kings solemnly deposed and imprisoned. But till Charles I, it no where appears, that any king was ever tried for his life, before his own subjects as judges. I shall say nothing here of other sovereigns, who are possessed of a greater authority over their subjects than the kings of England; for there may be a wide difference between sovereigns in that respect. But confining myself wholly to the kingdom of England, and supposing the constitution of the government such as it was from the conquest to Charles I., I shall briefly set forth what has been said for and against so extraordinary a trial. In the first place, it is demanded, On what law, natural or positive, was founded the right assumed by the parliament of England to try the king? The most plausible answer in vindication of the parliament’s proceedings, is as follows.

“ According to the constitution of the English government, the king is no less bound than the subject, to observe the laws, to which himself or predecessors assented, which is the principal clause of the coronation-oath. If this obligation be equal on both sides, there must be therefore equally means to cause them to discharge it, in case they come to neglect it. As for the subject, there is no manner of difficulty. The penalties against offenders are universally known, and the courts of justice are appointed to inflict them. It is true, the laws have ordained no penalty upon the kings who discharge not their duty, as well out of respect to the regal dignity, as because it cannot be supposed, that the king, to whom the execution of the laws is committed, should be the first to break them, and betray the trust lodged in him by the people. He is nevertheless bound to observe them himself, and cause them to be observed by the subject. This is a principle generally acknowledged. But what is this obligation, if the observance of the laws depends solely on his will, and there be no just means to compel him to ob-

'duty I owe to God in the preservation of the  
'true Liberty of my People, will not suffer  
'me at this time to be silent. For how  
'can any free-born subject of England call  
'life, or any thing he possesseth, his own, if  
'power without right daily make new, and

'abrogate the old fundamental ways of the  
'land, which I now take to be the present  
'case? Wherefore, when I came hither, I ex-  
'pected that you would have endeavoured to  
'have satisfied me concerning these grounds  
'which hinder me to answer to your pretended

serve them, or punish him when he breaks them? Will it not be an empty sound without any meaning? And will not the English government be as arbitrary as that of any other country in the world? Since, therefore, the laws have not decreed any penalty against a king that should neglect his duty, or the manner to constrain him to discharge it; and as, nevertheless, he is bound by the same laws to procure the observance thereof, and to observe them himself, the nation's representative in parliament is of course to call him to an account, since it is not possible to imagine any other way. Supposing the king has violated the most fundamental laws of the realm, shall foreigners be applied to, for to bring him to justice? Can it be supposed, contrary to experience, that the king is under an impossibility of breaking the fundamental laws of the kingdom, of endeavouring to subvert them, and of establishing an arbitrary government? Will it be maintained, that he may do it with impunity? But if he is assured of impunity, what difference is there between the English government and the most despotic, since its preservation will solely depend on the king's probity and will? If he runs no hazard in trying to alter the constitution, after ten attempts, he will try again, even till he succeeds. As to the objection, that less violent means than war may be used to oblige the king to the observance of the laws, and less unjust and extraordinary, than the taking away his life, to punish him for the breach of them; it is answered, This is true, and the parliament had accordingly tried to secure the government by other methods, as by demanding of the king that the power of the militia might be lodged in both houses. If the king had agreed to it, the realm would have been in peace, and the people's jealousies have ceased. But he had taken up arms to prevent the parliament's using these means, a clear evidence that his design was to maintain himself in a condition to alter the government when he should have opportunity. This unjust war had been the occasion of infinite mischiefs, of the death of thousands of his subjects, and the ruin of the rest; and if he was brought to a trial, it was not so much to punish him for violating the laws, as for preferring the unjust and violent way of arms, before the expedients offered him to prevent his breaking them for the future.

"The advocates for the king say, 1. Though the kings of England have not so much authority in their realm as some other kings, it does not follow, that they may be put upon a level with subjects, and made equally accountable for their actions.

2. "The principle laid down for foundation,

that there is an equal obligation upon the king and the subjects to observe the law, is false, and consequently the whole reasoning founded thereon, of no force. For, private persons being entrusted only with their own conduct, nothing can exempt them from the observance of the laws. But the king being entrusted with the government of the state, and the execution of the laws, he has consequently power to qualify them on certain occasions, otherwise this trust would be to no purpose. The laws could not foresee every thing, and there are occasions, where it is absolutely necessary for the public good to act contrary to them, or at least, to suspend the observance of them, and therefore the obligation of the king and the subject is not equal.

3. "Supposing the king had violated some of the fundamental laws of the kingdom, and levied war against the parliament after the most unjust manner, it did not follow that he might be punished with death, by reason he has neither superior nor equal in the kingdom, and he could have none but subjects for his judges. Besides, he was the fountain of justice, and it was absurd to make him liable to justice, from whom it flows and derives its whole authority.

4. "According to this supposition, the chance of war having put him in the power of his enemies, he might have been detained in prison, and prevented from doing mischief, till he was prevailed with to grant all the securities required. But there was a wide difference between imprisonment and death; as the first could be considered as a reasonable and necessary precaution, and the other as a punishment subjects were not impowered to inflict on their sovereign, as indeed, the like had never been heard of.

5. "But the supposition that the king had violated the laws, and levied unjust war against his parliament, was very far from being well-grounded. In the first place, as to the laws, if the king, misled by evil counsels, had, on some occasions, carried his power too far, when the parliament made him sensible of the ill consequences of this conduct, he had cheerfully and willingly renounced the exorbitant power which he believed himself before to be justly intitled to. He had, without delay, consented to all the acts presented to him on that subject, and agreed that his most intimate counsellors should be brought to justice. The parliament had accepted this reparation, without expressing the least desire of causing him to suffer for his past faults. After that, it was absurd to alledge these same faults, so amply repaired, as a motive of the justice pretended to be executed upon him.

'Impeachment: But since I see that nothing I can say will move you to it (though Negatives are not so naturally proved as Affirmatives), yet I will shew you the reason why I am confident you cannot judge me, nor indeed the meanest man in England: For I will not

'(like you), without shewing a reason, seek to impose a belief upon my subjects.'

[Hereabout I was stopped, and not suffered to speak any more concerning Reasons.]

'There is no proceeding just against any man, but what is warranted either by God's

6. "As for the war he had levied against his parliament, it was wrongfully asserted, and without the least proof, that the king had raised and begun it on purpose to avoid giving his people security. And under colour of desiring security for the future, a desire wholly founded upon mere suspicions and bare possibilities that the king might abuse his power, it was pretended to strip him of all his prerogatives, in a word, of the regal authority, and leave him only a shadow of royalty. Thus, supposing it true that the king had begun the war, which was by no means evinced, it would also be true, that the parliament had excited it, by attempting, under a vain pretence of peace and concord, to reduce the king to the most melancholy state a sovereign can possibly be in.

7. "The justice, pretended to be executed upon the king, was founded intirely on two suppositions, supported with no proof. The first, that the king had undertaken the war, only to free himself from giving security. The second, that there was reason to fear he would employ the power that should be left him, in altering the constitution. All reasonable persons were therefore left to judge, whether there was justice in trampling upon all laws divine and human, and inflicting upon their sovereign a capital punishment on two such rash suppositions.

8. "As for the plunder, ruin, murder, and other mischiefs occasioned by the wars, before they could be charged to the king's account, it ought at least to have been well proved that he was the author of the war. But if this point were fully examined, it would doubtless be found, that the complainers themselves could alone be charged with it.

9. "The king was proceeded against for intending to change the government, and make it arbitrary and tyrannical. But every Englishman was convinced, that the government had never been more despotic, more tyrannical, and more arbitrary than since the meeting of this parliament. There was scarce a law but what had been violated. The two houses had, for several years, usurped the supreme authority contrary to the known laws. And lately the commons had voted, that all power was lodged in them, without the concurrence of king and peers, a maxim unknown to the English from the foundation of the monarchy.

10. "The commons, in establishing, by a bare vote, that it belonged to them alone to try the king, had plainly declared, they owned neither superior nor equal, which was really introducing an arbitrary government.

11. "Lastly, till 1643, the parliament had only suspected the king's intention to alter the government, but after the parliament had as-

sumed the direction, the government was really and truly changed. The king was moreover suspected of designing to alter the established religion: but the parliament had indeed changed it, and reduced it to a deplorable confusion, and the project of this unfortunate change had been the true cause of the war, and of all the subsequent calamities.

IV. "The fourth circumstance I intend to observe, is, that the king was brought three times before the high court of justice, and as often called upon to answer the charge entered against him, which was read in his hearing. But he constantly refused to own the authority of the court, and of those who erected it. On the other hand, the court would never hear his reasons for declining their jurisdiction. They always took for granted, that the authority by which the court was established, was sufficient; which was the very thing the king would have combated, but was never suffered. At last, seeing he could not prevail to be heard on that subject, he left his reasons in writing.

V. "Of all the witnesses, as I said, examined against the king, there was not one which proved the king to be author of the war. But among the depositions, there were two which must not pass unobserved, supposing they were neither forged nor altered. The first shows, the king was much less incensed against the independents than against the presbyterians, though afterwards he had but too much cause to perceive, that the principles of the former, were more destructive to him, than those of the latter. The second seems to prove, that the king did not act with sincerity, even in the treaty of Newport.

"Richard Price, a scrivener of London, deposed, that the committee of safety being informed, that the king was privately negotiating with the independents, sent the deponent to Oxford, under colour of carrying proposals to the king, from the independents: that he was introduced to the king by the earl of Bristol, and received orders to say to the leading independents, from his majesty, that if they would take his part against the parliament, he would grant them whatever freedom they desired.

"The second deposition was that of Henry Gooche of Grey's-Inn, who said: 'That on the 30th of September last, having access to, and discourse with, the king at Newport, he told him, that since his majesty had justified the parliament's taking up arms, by consenting to the preface of the bill, he did not question, but most of the presbyterian-party, both soldiers and others, would stick close to him.' To which the king answered, 'That

' laws, or the municipal laws of the country where he lives. Now I am most confident, this day's proceeding cannot be warranted by God's law; for, on the contrary, the authority of obedience unto kings is clearly warranted, and strictly commanded both in the Old and New Testament; which if denied, I am ready instantly to prove.

' And for the Question now in hand, there it is said, That where the word of a king is, there is power; and who may say unto him, What dost thou? Eccl. viii. 4. Then for the law of this land, I am no less confident, that no learned lawyer will affirm, That an Impeachment can lie against the king, they all going in his name: And one of their maxims is, That the king can do no wrong. Besides, the law upon which you ground your Proceedings, must be either old or new; if old, shew it; if new, tell what authority, warranted by the fundamental laws of the land, hath made it, and when. But how the House of Commons can erect a Court of Judicature, which was never one itself, (as is well known to all lawyers) I leave to God and the world to judge. And it were full as strange, that they should pretend to make laws without king or lords house, to any that have heard speak of the laws of England.

' And admitting, but not granting, That the People of England's Commission could grant your pretended power, I see nothing you can shew for that; for certainly you never asked the question of the tenth man in the kingdom: and in this way you manifestly wrong even the poorest ploughman, if you demand not his free consent; nor can you pretend any colour for this your pretended Commission, without the consent at least of the major part of every man in England, of whatsoever quality or condition, which I am sure you never went about to seek; so far are you from having it. Thus you see that I speak not for my own right alone, as I am your King, but also for the true Liberty of all my Subjects; which consists not in the Power of Government, but in living under such Laws, such a Government, as may give themselves the best assurance of their lives, and property of their goods. Nor in this must or do I forget the Privileges of

' he would have all his old friends know, that though for the present he was contented to give the parliament leave to call their own war what they pleased, yet that he neither did then, nor ever should decline the justice of his own cause.' Moreover, upon the deponents saying, 'That his business was much retarded through want of commissions,' The king made answer, 'That being upon a treaty he would not dishonour himself, but if the deponent would go over to the prince his son, (who had full authority from him,) he, or any for him, should receive whatever commissions should be desired.' That, besides, he expressed much joy, that his good subjects would engage themselves for his restoration."

' both Houses of Parliament, which this day's Proceedings do not only violate, but likewise occasion the greatest breach of their public faith, that (I believe) ever was heard of: with which I am far from charging the two Houses: for all pretended crimes laid against me, bear date long before this Treaty at Newport, in which I have concluded as much as in me lay, and hopefully expecting the Houses agreement thereunto, I was suddenly surprised and hurried from thence as a Prisoner: upon which account I am against any will brought hither; where since I am come, I cannot but, to my power, defend the antient Laws and Liberties of this kingdom, together with my own just Right. Then, for any thing I can see, the Higher House is totally excluded. And for the House of Commons, it is too well known that the major part of them are detained or deterred from sitting; so as, if I had no other, this were sufficient for me to protest against the lawfulness of your pretended Court. Besides all this, the peace of the kingdom is not the least in my thoughts; and what hopes of settlement is there, so long as power reigns without rule or law, changing the whole frame of that Government, under which this kingdom hath flourished for many hundred years? (Nor will I say what will fall out, in case this lawless unjust Proceeding against me do go on.) And believe it, the Commons of England will not thank you for this change; for they will remember how happy they have been of late years under the reign of queen Elizabeth, the king my father, and myself, until the beginning of these unhappy Troubles, and will have cause to doubt that they shall never be so happy under any new. And by this time it will be too sensibly evident, that the arms I took up, were only to defend the fundamental laws of this kingdom, against those who have supposed my power hath totally changed the antient government.

' Thus having shewed you briefly the Reasons why I cannot submit to your pretended Authority, without violating the trust which I have from God for the Welfare and Liberty of my People; I expect from you either clear Reasons to convince my judgment, shewing me that I am in an error, (and then I will truly answer) or that you will withdraw your Proceedings.'

[This I intended to speak in Westminster-hall, on Monday, January the 22nd; but, against Reason, was hindered to shew my Reason.]

*Murtis, 23 Jan. 1649. Painted Chamber.*

Three Proclamations are made, and all parties concerned required to give their attendance.

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President of this Court.

John Lisle, Francis Allen,  
William Say, Henry Martin;  
Sir Jas. Harrington, kt. Thomas Scot,

Sir Hardress Waller.  
 Edmond Whalley,  
 John Venn,  
 Richard Deane,  
 John Huson,  
 Th. I. Grey of Grooby,  
 William Purefoy,  
 Daniel Blagrave,  
 Isaac Pennington, ald.  
 of London,  
 Thomas Harrison,  
 Adrian Scroope,  
 Robert Lilbourne,  
 Sir Gregory Norton,  
 Cornelius Holland,  
 William Cawley,  
 Augustine Garland,  
 Nicholas Love,  
 Thomas Hammond,  
 John Moore,  
 Edmond Harvey,  
 Thomas Pride,  
 Henry Smith,  
 Thomas Challoner,  
 Miles Corbet,  
 John Okey,  
 Sir W. Constable, bt.  
 Gilbert Millington,  
 Humphrey Edwards,  
 Anthony Stapely,  
 Robert Tichbourne,  
 Sir John Danvers,  
 Simon Meyne,  
 Vincent Potter,  
 Oliver Cromwell,  
 Edmund Ludlow,  
 John Blackistone,  
 Sir Henry Mildmay,  
 John Hutchinson,  
 Peter Temple,  
 Henry Ireton,  
 Sir Mich. Livesey, bt.  
 John Jones,  
 James Temple,  
 Isaac Ewers,  
 Sir John Bourchier,  
 John Fry,  
 Sir Th. Maleverer, bt.  
 Gregory Clement,  
 John Carew,  
 Thomas Andrews, ald.  
 of London,  
 John Dixwell,  
 Sir Gilb. Pickering, bt.  
 Wm. Heveningham,  
 Valentine Wauton,  
 John Downes,  
 Owen Roe.

Sixty-three Commissioners present.

Here the Court sat private.

And taking into consideration the Proceeding of the last court the last day, fully approved of what in their behalf had been then said and done; and likewise taking into consideration the demeanor of the king at the said Court, have notwithstanding resolved to try him once more, whether he will own the Court; and to that purpose,

Ordered, That the Lord President do acquaint the king, in case he shall continue contumacious, that he is to expect no further time; and that the Lord President do therefore in the name of the Court require his positive and final Answer: and if he shall still persist in his obstinacy; that the Lord President give command to the Clerk to read as followeth, viz. 'Charles Stuart, king of England, you are accused on the behalf of the people of England of divers high Crimes and Treasons, which Charge hath been read unto you; the Court now requires you to give your final and positive Answer, by way of Confession or Denial of the Charge.' Nevertheless, if the King should submit to answer, and desire a Copy of his Charge, that it be granted him by the Lord President; notwithstanding giving him to know, That the Court might in justice forthwith proceed to Judgment for his former contumacy and failure to Answer; and that he be required to give his Answer to the said Charge the next day at one of the clock in the afternoon. Whereupon the Court adjourned to Westminster-hall forthwith.

Westminster-Hall, 23 Jan. 1648, post Merid.  
 Three Proclamations being made, and At-

tendance and silence commanded, as formerly the Court is thereupon called.

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President of this Court.

Oliver Cromwell,	Th. I. Grey of Grooby,
Henry Ireton,	William Id. Mounson,
Sir Hardress Waller,	Sir John Danvers,
Valentine Wauton,	Sir Th. Maleverer, bt.
Thomas Harrison,	Sir John Bourchier, kt.
Edward Whalley,	Sir Jas. Harrington, kt.
Thomas Pride,	Robert Wallop,
Isaac Ewers,	Wm. Heveningham,
Henry Martin,	Isaac Pennington, alderman of London,
William Purefoy,	John Allured,
John Berkstead,	Henry Smith,
John Blackistone,	James Temple,
Gilbert Millington,	Peter Temple,
Sir W. Constable, bt.	Daniel Blagrave,
Edmond Ludlow,	Humphrey Edwards,
John Hutchinson,	Gregory Clement,
Sir Mich. Livesey, bt.	John Fry,
Robert Tichbourne,	Thomas Wogan,
Owen Roe,	Sir Greg. Norton, bt.
Robert Lilbourne,	Edmond Harvey,
Adrian Scroope,	John Venn,
Richard Deane,	Thomas Scot,
John Okey,	Thomas Andrews, ald. of London,
John Huson,	William Cawley,
William Goffe,	Anthony Stapely,
Cornelius Holland,	John Downes,
John Carew,	Thomas Horton,
John Jones,	Thomas Hammond,
Miles Corbet,	John Lisle,
Francis Allen,	Nicholas Love,
Peregrine Pelham,	Vincent Potter,
Thomas Challoner,	Sir Gilb. Pickering, bt.
John Moor,	Augustine Garland,
William Say,	Simon Meyne.
John Dixwell,	
Sir H. Mildmay, knt.	

Seventy-one Commissioners present.

The Court being called, the Serjeant is required to send for the Prisoner, who was accordingly brought to the bar, where he took his seat as formerly. Proclamation is thereupon made for silence, while the Pleas of the Commonwealth are in hand, and the Captain of the Guard commanded by proclamation to take into custody all that shall disturb the proceedings of the Court.

Mr. Solicitor Cook addressing himself to the Court, repeated the former Delays and contempts of the Prisoner, so as that no more needed on his part, but to demand Judgment; yet offered, notwithstanding the notoriety of the facts charged, mentioned in the common Act appointing the Trial, to prove the truth of the same by Witnesses, if thereto required: and therefore prayed, and yet, he said, not so much he, as the innocent blood that had been shed, the cry whereof was very great, that a speedy Sentence and Judgment might be pronounced against the Prisoner at the bar according to justice.

Hereupon the Court putting the Prisoner in

mind of former proceedings, and that although by the rules of justice, if advantage were taken of his past Contempts, nothing would remain but to pronounce Judgment against him, they had nevertheless determined to give him leave to answer his Charge; which, as was told him in plain terms, (for justice knew no respect of persons) was to plead Guilty or Not Guilty thereto.

To which he made Answer as formerly, That he would not acknowledge the jurisdiction of the Court, and that it was against the Fundamental laws of the kingdom; that there was no law to make a king a Prisoner; that he had done nothing against his trust; and issued out into such-like discourses.

Upon which the Court's Resolution was again remembered to him, and he told, That he had now the third time publicly disowned and affronted the Court: That how good a preserver he had been of the fundamental laws and freedoms of the people, his actions had spoken; that men's intentions were used to be shewed by their actions, and that he had written his meaning in bloody characters throughout the kingdom; and that he should find at last, though at present he would not understand it, that he was before a Court of Justice.

Hereupon, in the manner appointed, the Clerk in the name of the Court demanding the Prisoner's Answer to his Charge, and the same refused, the default was recorded, the Prisoner remanded, and the Court adjourned to the Painted Chamber.

#### *Painted Chamber.*

The Court, according to their former adjournment from Westminster-hall, came together from thence into the Painted Chamber, where they sat privately, and ordered as followeth: Ordered, "That no Commissioner ought, or shall depart from the Court, without the special leave of the said Court."

This Court took into consideration the managing of the business of the Court this day in the Hall, and the King's refusal to answer, notwithstanding he had been three several times demanded and required thereunto; and have thereupon fully approved of what on the Court's part had then passed; and resolved, "That notwithstanding the said contumacy of the King, and refusal to plead, which in law amounts to a standing mute, and tacit confession of the charge; and notwithstanding the notoriety of the fact charged, the Court would nevertheless however examine witnesses, for the further and clearer satisfaction of their own judgments and consciences; the manner of whose Examination was referred to further consideration the next sitting, and warrants were accordingly issued forth for summoning of witnesses.

Mr. Peters moveth the Court as a messenger from the King, viz. That the king desires he might speak with his chaplains that came unto him privately: but the House of Commons having taken that into their considera-

tion, the Court conceived it not proper for them to intermeddle therein. The Court adjourned itself till nine o'clock to-morrow morning, to this place.

[What passed in the Hall more at large than is related by Phelps in this Day's Transactions, see in the following Discourse.

The King being brought in by the guard, looks with a majestic countenance upon his pretended judges, and sits down. After the second O Yes, and silence commanded, Cook began more insolently:

*Cook.* May it please your lordship, my Lord President; this is now the third time, that, by the great grace and favour of this High Court, the Prisoner hath been brought to the bar, before any issue joined in the cause. My lord, I did at the first court exhibit a Charge against him, containing the highest Treason that ever was wrought upon the theatre of England: That a king of England trusted to keep the law, that had taken an oath so to do, that had tribute paid him for that end, should be guilty of a wicked design to subvert and destroy our laws, and introduce an arbitrary and tyrannical government, in the defiance of the parliament and their authority, set up his standard for War against the Parliament and People: and I did humbly pray, in the behalf of the people of England, that he might speedily be required to make an Answer to the Charge.—But, my lord, instead of making any Answer, he did then dispute the authority of this High Court. Your lordship was pleased to give him a further day to consider, and to put in his Answer; which day being yesterday, I did humbly move, that he might be required to give a direct and positive Answer either by denying or confession of it: but, my lord, he was then pleased for to demur to the jurisdiction of the Court; which the Court did then over-rule, and command him to give a direct and positive Answer. My lord, besides this great delay of justice, I shall now humbly move your lordship for speedy Judgment against him. My lord, I might press your lordship upon the whole, that according to the known rules of the law of the land, That if a prisoner shall stand as contumacious in contempt, and shall not put in an answerable plea, Guilty or not Guilty of the Charge given against him, whereby he may come to a fair trial; that, as by an implicit confession, it may be taken *pro confesso*, as it hath been done to those who have deserved more favour than the prisoner at the bar has done. But besides, my lord, I shall humbly press your lordship upon the whole fact. The House of Commons, the supreme authority and jurisdiction of the kingdom, they have declared, That it is notorious, that the matter of the Charge is true, as it is in truth, my lord, as clear as crystal, and as the sun that shines at noon-day: which if your lordship and the Court be not satisfied in, I have notwithstanding, on the people of England's behalf, several Witnesses to produce. And

therefore I do humbly pray, (and yet I must confess it is not so much I, as the innocent blood that hath been shed, the cry whereof is very great for justice and judgment; and therefore I do humbly pray) that speedy Judgment be pronounced against the Prisoner at the bar.

*Bradshaw* went on in the same strain :

Sir, You have heard what is moved by the counsel on the behalf of the kingdom against you. Sir, you may well remember, and if you do not, the Court cannot forget what dilatory dealings the Court hath found at your hands. You were pleased to propound some questions; you have had our Resolution upon them. You were told over and over again, That the Court did affirm their own jurisdiction; that it was not for you, nor any other man, to dispute the jurisdiction of the supreme and highest authority of England, from which there is no appeal, and touching which there must be no dispute: yet you did persist in such carriage, as you gave no manner of obedience, nor did you acknowledge any authority in them, nor the High Court that constituted this court of justice.—Sir, I must let you know from the Court, that they are very sensible of these delays of yours, and that they ought not, being thus authorized by the supreme Court of England, to be thus trifled withal; and that they might in justice, if they pleased, and according to the rules of justice, take advantage of these delays, and proceed to pronounce Judgment against you: yet nevertheless they are pleased to give direction, and on their behalfs I do require you, that you make a positive Answer unto this Charge that is against you, sir, in plain terms (for justice knows no respect of persons;) you are to give your positive and final Answer in plain English, whether you be guilty or not guilty of these Treasons laid to your Charge.

The King, after a little pause, said,

When I was here yesterday, I did desire to speak for the Liberties of the people of England: I was interrupted: I desire to know yet, whether I may speak freely or not.

*Bradshaw*. Sir, you have had the Resolution of the Court upon the like question the last day, and you were told, that having such a Charge of so high a nature against you, your work was, that you ought to acknowledge the jurisdiction of the Court, and to answer to your Charge. Sir, If you answer to your Charge, which the Court gives you leave now to do, though they might have taken the advantage of your contempt; yet if you be able to answer to your Charge, when you have once answered, you shall be heard at large, make the best Defence you can. But, sir, I must let you know from the Court, as their commands, that you are not to be permitted to issue out into any other discourses, till such time as you have given a positive answer concerning the matter that is charged upon you.

*King*. For the Charge, I value it not a rush; it is the Liberty of the People of England that I stand for. For me to acknowledge a new Court that I never heard of before, I that am your king, that should be an example to all the people of England for to uphold justice, to maintain the old laws; indeed I know not how to do it. You spoke very well the first day that I came here, (on Saturday) of the obligations that I had laid upon me by God, to the maintenance of the Liberties of my People: the same obligation you spake of, I do acknowledge to God that I owe to him and to my people, to defend as much as in me lies the antient laws of the kingdom. Therefore, until that I may know that this is not against the Fundamental Laws of the kingdom, by your favour I can put in no particular Answer. If you will give me time, I will shew you my reasons why I cannot do it, and this—

Here being interrupted, he said,

By your favour, you ought not to interrupt me: how I came here I know not; there is no Law for it to make your King your Prisoner. I was in a Treaty upon the public faith of the kingdom, that was the known—two Houses of Parliament that was the Representative of the kingdom; and when I had almost made an end of the Treaty, then I was hurried away, and brought hither: and therefore—

*Bradshaw*. Sir, you must know the pleasure of the Court.

*King*. By your favour, Sir.

*Bradshaw*. Nay, Sir, by your favour, you may not be permitted to fall into those discourses; you appear as a Delinquent, you have not acknowledged the Authority of the Court, the Court craves it not of you: but once more they command you to give your positive Answer—Clerk, do your duty.

*King*. Duty, Sir!

The Clerk reads:

‘Charles Stuart, king of England, you are accused in the behalf of the Commons of England, of divers High Crimes and Treasons; which Charge hath been read unto you: The Court now requires you to give your positive and final Answer, by way of confession or denial of the Charge.’

*King*. Sir, I say again to you, so that I might give satisfaction to the People of England of the clearness of my proceeding, not by way of Answer, not in this way, but to satisfy them that I have done nothing against that trust that hath been committed to me, I would do it: but to acknowledge a new Court, against their privileges, to alter the fundamental laws of the kingdom, Sir, you must excuse me.

*Bradshaw*. Sir, this is the third time that you have publicly disowned this Court, and put an affront upon it: How far you have preserved the Privileges of the people, your actions have spoke it; but truly, Sir, men's intentions ought to be known by their actions;

you have written your meaning in bloody characters throughout the whole kingdom. But, Sir, you understand the pleasure of the Court.—Clerk, record the Default.—And, Gentlemen, you that took Charge of the Prisoner, take him back again.

**King.** I will only say this one word more to you; if it were only my own particular I would not say any more, nor interrupt you.

**Bradshaw.** Sir, you have heard the pleasure of the Court, and you are (notwithstanding you will not understand it) to find that you are before a Court of Justice.

Then the King went forth with the Guard; and Proclamation was made, That all persons which had then appeared, and had further to do at the Court, might depart into the Painted-Chamber; to which place the Court did forthwith adjourn, and intended to meet at Westminster-Hall by ten of the clock next morning.

**Cryer.** God bless the Kingdom of England!]

*Mercurii, 24 Jan. 1649. Painted Chamber.*

Three Proclamations made.

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President.

Sir Tho. Maleverer, bt.	John Berkstead.
Thomas Scot.	Th. Id. Greyot Grooby.
Edward Whalley.	John Huson.
John Carew.	John Okey.
Edmond Harvey.	Gilbert Millington.
Owen Roe.	John Jones.
John Blackistone.	William Goffe.
William Purefoy.	Sir John Bouchier.
Henry Smith.	Isaac Pennington, al-
John Fry.	derman of London.
Francis Lassels.	Simon Meyne.
Daniel Blagrove.	Adrian Scroope.
Anth ny Stapely.	John Dixwell.
Sir Greg. Norton, bt.	Isaac Ewers.
William Cawley.	John Alared.
Robert Titchbourne.	Peter Temple.
Henry Marten.	Peregrine Pelham.
Oliver Cromwell.	Edmond Ludlow.
Sir John Danvers.	John Hutchinson.
John Moor.	Thomas Pride.
Richard Deane.	Wm. Heveningham.
Vincent Potter.	Sir Wm. Constable.
Thomas Horton.	Francis Allen.
Cornelius Hoiland.	

The Court took into consideration the manner how the Witnesses should be examined; and in regard the King hath not pleaded to issue and that this Examination was *ex abundanti* only, for the further satisfaction of themselves:

Resolved, That the Witnesses shall be examined to the Charge against the King, in the Painted-Chamber, before the Court there.

Ordered, That Mr. Millington and Mr. Tho. Challoner do forthwith repair unto John Brown, Esq. Clerk of the House of Peers, for such Papers as are in his custody, which

are conducible for the business and service of this Court; and the said Mr. Brown is required to send the said Papers hither accordingly.

*Witnesses produced and sworn in Court to give Evidence to the Charge against the King.*

Henry Hartford.	Richard Blomfield.
Edward Roberts.	John Thomas.
William Braynes.	Samuel Lawton.
Robert Lacy.	John P'yneger.
Robert Londres.	George Cornewall.
Samuel Morgan.	Tho. Whittington.
James Williams.	William Jones.
Michael Potts.	Humphrey Browne.
Giles Gryce.	Arthur Young.
William Arnop.	David Evans.
John Vinson.	Diognes Edwards.
George Seely.	Robert Williams.
Tho. Ives.	John Bennet.
James Crosby.	Samuel Burden.
Tho. Rawlins.	

Col. Horton, col. Deane, col. Okey, col. Huson, col. Roe, col. Titchbourne, col. Whalley, col. Thomlinson, col. Goffe, col. Ewers, col. Scroope, Mr. Love, Mr. Scot, Mr. Tho. Challoner, Mr. Millington, and sir John Danvers, or any three of them, are a Committee appointed to take the Examination of the said Witnesses now sworn, whom the Clerks are to attend for that purpose.

The Court granted their Summons for summoning further Witnesses, and adjourned itself till the morrow at nine of the clock in the morning to this place.

*Jovis, 25 Jan. 1649. Painted Chamber.*

The Commissioners present.

John Bradshaw, Serjeant at Law, Lord President of this Court.

Richard Deane.	Sir John Bouchier, kt.
Sir Hardress Waller.	Sir Tho. Maleverer, bt.
John Moore.	Francis Allen.
Peregrine Pelham.	Thomas Harrison.
John Huson.	John Jones.
John Berkstead.	John Alared.
Edward Whalley.	John Brown.
John Okey.	Isaac Ewers.
Edmond Harvey.	Robert Titchbourne.
Adrian Scroope.	Augustine Garland.
Henry Smith.	Francis Lassels.
Thomas Scot.	John Dixwell.
William Cawley.	Sir Mich. Livesey, bt.
Gilbert Millington.	John Venn.
Thomas Challoner.	Edmond Wild.
John Carew.	(With divers others.)

Here the Court sat private.

The Court ordered, That the Marshal-general of this Army, or his Deputy, do bring forthwith Mr. Holder prisoner at Whitehall, to the end that he may testify his knowledge of all such matters as shall be propounded unto him concerning the Charge against the King.

Ordered, That the Dean's House in Westminster-Abbey be provided and furnished for the Lodging of the Lord President and

his Servants, Guards and attendants; and a Committee are appointed to take care hereof accordingly.

Mr. Henry Gouge and Mr. William Cuthbert, Witnesses produced to the Charge against the King, were sworn and examined.

The Witnesses sworn in open Court, and after examined by the Committee appointed for that purpose the 24th instant, were now in open Court called, and their respective Depositions were read to them; who did avow their said several Depositions, and affirm what was so read unto them respectively was true, upon the oaths they had taken.

The Court being informed, that major Fox, being of the guard attending the Lord President, is arrested and committed to the Keeper of Ludgate: Ordered, that the said Keeper do forthwith bring the said major before this Court, and attend this Court in person himself.

Mr. Holder being brought before this Court according to the Order of this day, and his oath tendered unto him, to give evidence to such matters as should be propounded unto him concerning the Charge against the king; the said Mr. Holder desired to be spared from giving Evidence against the king. Whereupon the Commissioners finding him already a Prisoner, and perceiving that the Questions intended to be asked him, tended to accuse himself, thought fit to waive his Examination, and remanded him (and accordingly did so) to the prison from whence he was brought.

The Depositions taken *ut supra*, are as followeth, viz.

Jan. 25, 1649.

*William Cuthbert* of Pattingham in Holderness, (in the county of York,) gent. aged 42 years, or thereabouts, sworn and examined, saith, That he, this Deponent, living at Hull-Bridge near Beverly, in July 1642, did then hear that forces were raised, about 3,000 foot, for the King's Guard under sir Robert Strickland.—And this Deponent further saith, That about the second of July 1642, he saw a troop of horse come to Beverly, being the Lord's-Day, about four or five of the clock in the afternoon, called the Prince's Troop; Mr. James Nelthorpe being then major of the said town.—And this Deponent further saith, That he did see that afternoon the said troop march from Beverly aforesaid into Holderness, where they received ammunition brought up by the river Humber unto them.—And this Deponent further saith, That the same night, being Sunday, there came about 300 foot-soldiers (said to be sir Robert Strickland's regiment), under the command of lieut. col. Duncombe, and called the King's Guard, unto this Deponent's house, called Hull-Bridge, near Beverly, about midnight, and broke open, entered, and possessed themselves of the said house; and that the earl of Newport, the earl of Carnarvan, and divers others, came that night thither to the said forces: And

that the same night, as this Deponent was then informed, sir Tho. Gower, then high sheriff of the said county, came thither, and left there a Warrant for staying all provisions from going to Hull to sir John Hotham; which said Warrant was then delivered to this Deponent, being constable, by lieut. col. Duncombe.—And this Deponent further saith, That he was by the said forces put out of his house, and did with his family go to Beverly; and that after that, viz. the Thursday following, to this Deponent's best remembrance, he did see the king come to Beverly, to the lady Gee's house there; where he, this Deponent, did often see the king with prince Charles and the duke of York: and that the Trained Bands were then raised in Holderness; who were raised (as was generally reported) by the king's command.—And this Deponent further saith, That the night after the said forces had, as aforesaid, possessed themselves of this Deponent's house, col. Legard's house was plundered by them, being upon a Monday; which aforesaid entry of this Deponent's house, was the first act of hostility that was committed in those parts.—And this Deponent further saith, That after the said sir Robert Strickland's said Company was gone from Hull-Bridge, having continued there about ten days, there then came to the said house col. Wivel, with about seven hundred foot soldiers, who then took up his quarters at Hull-Bridge aforesaid. And this Deponent further saith, That the Warrant he now produceth to this Court, is the same original Warrant aforesaid spoken of.—And this Deponent further saith, That the General's name of the said forces that were there, and raised as aforesaid, was the earl of Lindsey; and that this Deponent was brought before him the said General, in the name of the king's Lord General, for holding intelligence with sir John Hotham, then governor of Hull; and because it was then informed to the said general, that he this Deponent had provisions of corn to send over unto Ireland, which he this Deponent was forbidden by the said general to send unto Ireland, or any place else, without his or the king's direction or warrant first had in that behalf.

The aforesaid Warrant, mentioned in the Deposition of the said William Cuthbert, is as followeth:

'It is his majesty's command, that you do not suffer any victuals or provision, of what sort soever, to be carried into the town of Hull, without his majesty's special licence first obtained. And of this you are not to fail at your peril.' TMO. GOWER, Vi. Co. Dated at Beverley, 3 Julij, 1642. To all Head-Constables and Constables in the East-Riding of the County of York, and to all other his majesty's Loyal Subjects.

\* "Sir John Hotham's keeping Hull as a Garrison against the King, which was before this, was, it seems, no Act of Hostility, in this perjured Villain's account." Nelson.

*John Bennet* of Harwood, in the county of York, Glover, sworn and examined, saith, That he being a soldier under the king's command, the first day that the king's standard was set up at Nottingham, which was about the middle of summer last was six years, he this Examinant did work at Nottingham; and that he did see the King within the Castle of Nottingham, within two or three days after the said standard was so set up; and that the said standard did fly the same day that the king was in the said castle, as aforesaid: and this Deponent did hear that the king was at Nottingham the same day that the said standard was set up, and before.—And this Deponent further saith, That he this Deponent, and the regiment of which he then was, had their colours then given them; and sir Wm. Penynman being the colonel of the said regiment, the said sir Wm. Penynman was present with his said regiment at that time.—And this Deponent further saith, That there was then there the earl of Lindsey's regiment who had then their colours given them, and that the said earl of Lindsey was then also proclaimed there the King's General; and that it was proclaimed then there likewise in the king's name, at the head of every regiment, that the said forces should fight against all that came to oppose the king, or any of his followers; and in particular against the earl of Essex, the lord Brooke, and divers others: and that they the said earl of Essex, the lord Brooke, and divers others, were then proclaimed Traitors; and that the same Proclamations were printed, and dispersed by the officers of the regiments throughout every regiment.—And this Deponent further saith, That the said Standard was advanced upon the highest Tower of Nottingham-Castle; and that he this Deponent did see the King often in Nottingham at that time that the said forces continued at Nottingham as aforesaid, they continuing there for the space of one month; and that the drums for raising volunteers to fight under the King's command, were then beaten all the said county over, and divers other forces were raised there.—And this Deponent further saith, That he did take up arms under the King's command as aforesaid, for fear of being plundered; sir Wm. Penynman giving out that it were a good deed to fire the said town, because they would not go forth in the King's service: and that this Deponent's father did thereupon command him this Deponent to take up arms as aforesaid, and that divers others (as they did confess) did then also take up arms for the King, for fear of being plundered.—And this Deponent further saith, That in or about the month of October, 1642, he did see the king at Edge-Hill in Warwickshire; where he sitting on horseback while his army was drawn up before him, did speak to the colonel of every regiment that passed by him, that he would have them speak to their soldiers to encourage them to stand it, and to fight against the lord of Essex, the lord Brooke, sir Wil-

liam Walker, and sir William Balfour\*.—And this Deponent saith, That he did see many slain at the Fight at Edge-Hill, and that afterwards he did see a List brought in unto Oxford, of the men which were slain in that fight; by which it was reported, that there were slain 6559 men.—And this Deponent further saith, Afterwards, in or about the month of November, 1642, he did see the King in the head of his army at Hounslow-Heath in Middlesex, prince Rupert then standing by him. And he this Deponent did then hear the King encourage several regiments of Welshmen (then being in the field) which had run away at Edge-Hill, saying unto them, that he did hope they would regain their honour at Brentford, which they had lost at Edge-Hill.

*William Brayne* of Wixall in the county of Salop, gent. being sworn and examined, deposeth, That about August 1642, this Deponent saw the king at Nottingham, while the Standard was set up, and the flag flying; and that he this Deponent much about the same time marched with the King's Army from Nottingham to Derby, the king himself being then in the army: and about September the said year, he this Deponent was put upon his Trial at Shrewsbury as a spy, before sir Robert Heath, and other commissioners of Oyer and Terminer, the King then being in person in Shrewsbury.

*Henry Hertford* of Stratford upon Avon in Warwickshire, sworn and examined, deposeth, That about Corn-Harvest in the year 1642, this Deponent saw the king in Nottingham-Castle, while the Standard was set upon one of the Towers of the said Castle, and the flag flying.—And he further saith and deposeth, That he this Deponent saw the king the same year about the month of November in Brentford town on horseback, with a great many commanders about him, on a Sunday morning, when on the Saturday night before there were a great many of the Parliament's Forces slain by the King's forces in the said town.

*Robert Lacy* of the town and county of Nottingham, painter, sworn and examined, deposeth, That he this Deponent, in summer-time in the year 1642, by order from my lord Beaumont, did paint the Standard-Pole which was set up on the top of the old Tower of Nottingham-Castle. And he further saith, That he saw the King in the town of Nottingham divers times while the Standard was up there, and the flag flying; and the king did lie at the house of my lord of Clare in Nottingham town, and that he this deponent did then and there see the king many times.

*Edward Roberts* of Bishop's-Castle in the county of Salop, ironmonger, sworn and exa-

\* How is it possible this Fellow could swear the King spoke this to every Colonel, seeing it was as they passed by? And when his Colonel was passed by, he could hear no more. Nals.

mined, saith and deposeeth, That he this Deponent saw the King in Nottingham town while the standard was set upon the High-Tower in Nottingham-Castle.—And he further saith, That he saw the King at the head of the army at Shrewsbury, upon the march towards Edge-Hill, and that he likewise saw the king in the rear of his army in Keynton-Field; and likewise saw the King upon the Sunday morning at Brentford, after the Fight upon the Saturday next before, in the said town.

*Robert Loads* of Cottam in Nottinghamshire, tiler, sworn and examined, saith, That he this Deponent about October 1642, saw the King in the rear of his army in Keynton-Field upon a Sunday, where he saw many slain on both sides.—And he further saith, That he saw the King in Cornwall in his army, near the house of my lord Mohun, about Lestwithiel, about corn-harvest 1644.

*Samuel Morgan* of Wellington in Com. Salop, felt-maker, sworn and examined, deposeeth, That he this Deponent upon a Sunday morning in Keynton-Field saw the King upon the top of Edge-Hill, in the head of the army, some two hours before the Fight, which happened after Michaelmas on a Sunday the year 1642. And he this Deponent saw many men killed on both sides in the same time and place.—And he further saith, That in the year 1644, he this Deponent saw the King in his army near Cropredy-Bridge, where he saw the King light off his horse, and draw up the body of his army in person himself.

*James Williams* of Ross in Herefordshire, shoemaker, sworn and examined, deposeeth, That he this Deponent, about October, 1642, saw the King in Keynton-Field, below the hill in the field, with his sword drawn in his hand; at which time and place there was a great fight, and many killed on both sides.—And he further deposeeth, That he saw the King at Brentford on a Sunday in the forenoon, in November the year aforesaid, while the King's army was in the said town, and round about it.

*John Pyneger* of the parish of Hauer in the county of Derby, yeoman, aged 37 years or thereabout, sworn and examined, saith, That about August 1642, he the Deponent saw the King's Standard flying upon one of the towers of Nottingham-Castle; and that upon the same day he saw the King in Thurland-House, being the earl of Clare's house in Nottingham, in the company of prince Rupert, sir John Digby, and other persons, both noblemen and others; and that the King had at the same time in the said town, a train of Artillery, and the said town was then full of the King's soldiers.

*Samuel Lawson* of Nottingham, maltster, aged 30 years, or thereabouts, sworn and examined, saith, That about August 1642, he this Deponent saw the King's Standard brought forth of Nottingham-Castle, borne upon divers gentlemen's shoulders, who (as the report was) were

noblemen; and he saw the same by them carried to the hill close adjoining to the Castle, with a herald before it, and there the said standard was erected with great shootings, acclamations, and sound of drums and trumpets; and that when the said standard was so erected, there was a Proclamation made: and that he this Deponent saw the king present at the erecting thereof. And this Deponent further saith, That the said town was then full of the King's soldiers, of which some quartered in this Deponent's house; and that when the King with his said forces went from the said town, the inhabitants of the said town were forced to pay a great sum of money to the King's Army, being threatened, that in case they should refuse to pay it, the said town should be plundered.

*Arthur Young*, citizen and barber-chirurgeon of London, being aged 29 years, or thereabouts, sworn and examined, saith, That he this Deponent was present at the Fight at Edge-Hill, between the King's Army and the Parliament's, in October 1642, and he did then see the King's standard advanced, and flying in his army in the said fight. And that he this Deponent did then take the King's said standard in that battle from the King's forces, which was afterwards taken from him by one Middleton, who was afterwards made a colonel.

*Thomas Whittington*, of the town and county of Nottingham, shoemaker, aged twenty-two years, sworn and examined, saith, That he this Deponent saw the King in the town of Nottingham, the same day that his Standard was first set up in Nottingham Castle, being about the beginning of Aug. 1642, and that the King then went from his lodgings at Thurland-house towards the said castle; and that he this Deponent saw him several times, about that time, in Nottingham, there being divers soldiers at that time in the said town, who were called by the name of 'The King's Soldiers.' And this Deponent further saith, That he saw the King's Standard flying upon the Old Tower in the said Castle.

*John Thomas* of Llangollen, in the county of Denbigh, husbandman, aged 25 years, or thereabouts, sworn and examined, saith, That he saw the King at Brentford in the county of Middlesex, on a Saturday night at twelve of the clock, soon after Edge-Hill Fight, attended with horse and foot soldiers, the king being then on horseback, with his sword by his side; and this Deponent then heard the King say to the said soldiers, as he was riding through the said town, 'Gentlemen, you lost your honour at Edge-Hill, I hope you will regain it again here;' or words to that effect.—And this Deponent further saith, That there were some skirmishes between the King's Army and the Parliament's Army, at the same time, both before and after the King spake the said words; and that many men were slain on both sides.

*Richard Blomfield*, citizen and weaver of London, aged 35 years, or thereabouts, sworn and examined, saith, That at the Defeat of the earl of Essex's army in Cornwall, he this Deponent was there; it being at the latter end of the month of August, or beginning of September 1644, at which time, he this Deponent saw the King at the head of his army, near Foy, on horseback: and further he saith, That he did then see divers of the lord of Essex's soldiers plundered, contrary to Articles then lately made, near the person of the King.

*William Jones* of Uske in the county of Monmouth, husbandman, aged 22 years, or thereabout, sworn and examined, saith, That he this Deponent did see the King within two miles of Naseby-Field, the King then coming fromwards Harborough, marching in the head of his Army, towards Naseby-Field where the Fight was; and that he this Deponent did then see the king ride up to the regiment which was col. St. George's, and there the Deponent did hear the King ask the regiment, 'Whether they were willing to fight for him?' To which the soldiers made an acclamation, crying, 'All,' 'All.'—And this Deponent further saith, That he saw the King in Leicester with his forces, the same day that the King's Forces had taken it from the parliament's forces.—And this Deponent further saith, That he saw the King in his Army that besieged Gloucester, at the time of the said siege.

*Humphrey Browne* of Whitsondine in the county of Rutland, husbandman, aged 22 years or thereabouts, sworn and examined, saith, That at such time as the town of Leicester was taken by the King's Forces, being in or about June, 1645, Newark-Fort in Leicester aforesaid was surrendered to the King's Forces, upon composition, that neither clothes nor money should be taken away from any of the soldiers of that fort, which had so surrendered, nor any violence offered to them; and that as soon as the said Fort was upon such composition so surrendered as aforesaid, the king's soldiers, contrary to the Articles, fell upon the soldiers of the said fort, stripped, cut and wounded many of them: whereupon one of the King's officers rebuking some of those that did so abuse the said Parliament's Soldiers, this Deponent did then hear the King reply, 'I do not care if they cut them three times more, for they are mine enemies,' or words to that effect: And that the King was then on horseback, in bright armour, in the said town of Leicester.

*David Erans* of Abergenny in the county of Monmouth, smith, aged about 23 years, sworn and examined, saith, That about half an hour before the Fight at Naseby, about Midsummer in June 1645, he saw the King marching up to the Battle in the head of his Army, being about half a mile from the place where the said Battle was fought.

*Diognes Edwards* of Carston, in the county

of Salop, butcher, aged 31 or thereabouts, sworn and examined, saith, That in June 1645, he this Deponent saw the King in the head of his Army an hour and a half before the Fight in Naseby-Field, marching up to the Battle, being then a mile and a half from the said field: And this Deponent saith, that he did afterwards the same day see many slain at the said Battle.

*Gyles Gryce* of Wellington, in Shropshire, gent. sworn and examined, deposeseth, That he this deponent saw the king in the head of his army at Cropredy-Bridge, with his sword drawn in his hand that day when the fight was against sir William Waller, on a Friday, as this deponent remembereth, in the year 1644, about the month of July. And he further saith, That he saw the king in the same summer in Cornwall, in the head of his army, about Lestwithiel, at such time as the earl of Essex was there with his army. And he further saith, That he also saw the King in the head of his Army at the second Fight near Newbury. And farther saith, That he saw the King in the front of the army in Naseby-Field, having back and breast on. And he further saith, That he saw the King at the head of the Army, at what time the town of Leicester was stormed, and saw the King ride into the town of Leicester, after the town was taken, and he saw a great many men killed on both sides, at Leicester, and many houses plundered.

*John Finton* of Damorham, in the county of Wilts, gent. sworn and examined, saith, That he did see the King at the first Newbury Fight, about the month of September 1643, in the head of his Army, where this Deponent did see many slain on both sides. This Deponent also saith, That he did see the king at the second Battle at Newbury, about the month of November 1644, where the King was at the head of his Army in complete armour, with his sword drawn; and this Deponent did then see the King lead up col. Tho. Howard's regiment of horse, and did hear him make a Speech to the soldiers, in the head of that regiment, to this effect; that is to say, 'That the said Regiment should stand to him that day, for that his crown lay upon the point of the sword; and if he lost that day, he lost his honour and his crown for ever.' And that this Deponent did see many slain on both sides at that Battle. This Deponent further saith, That he did see the King in the Battle at Naseby-Field in Northamptonshire, on or about the month of June 1645, where the King was then completely armed with back, breast and helmet, and had his sword drawn, where the King himself, after his Party was routed, did rally up the horse, and caused them to stand; and at that time this Deponent did see many slain on both sides.

*George Seeley* of London, cordwainer, sworn and examined, saith, That he did see the King at the head of a brigade of horse at the Siege of Gloucester, and did also see the King at the

first Fight at Newbury, about the month of September 1643, where the King was at the head of a regiment of horse, and that there were many slain at that fight on both sides. This Deponent also saith, That he did see the King at the second Fight at Newbury, which was about November, 1644, where the King was in the middle of his army.

*John Moore* of the city of Cork in Ireland, gent. sworn and examined, saith, That at the last Fight at Newbury, about the month of November 1644, he this Deponent did see the King in the middle of the horse, with his sword drawn; and that he did see abundance of men at that Fight slain upon the ground on both sides. This Deponent also saith, That he did see the King ride into Leicester before a party of horse the same day that Leicester was taken by the King's forces, which was about the month of June, 1645. This Deponent further saith, That he did see the King, before the Fight at Leicester, at Cropredy-bridge, in the midst of a regiment of horse; and that he did see many slain at the same time, when the King was in the fight at Cropredy-bridge. And lastly, this Deponent saith, That he did see the King at the head of a regiment of horse at Naseby Fight, about the month of June 1645, where he did see abundance of men cut, shot, and slain.

*Thomas Ives* of Boyset, in the county of Northampton, husbandman, sworn and examined, saith, That he did see the King in his army at the first Fight in Newbury in Berkshire, in the month of September 1643, and that he did see many slain at that Fight; he this Deponent and others, with a party of horse, being commanded to face the Parliament's forces, whilst the foot did fetch off the dead.—He saith also, That he did see the King advance with his army to the Fight at Naseby field in Northamptonshire, about June 1645, and that he did again at that Fight see the King come off with a party of horse after that his army was routed in the field; and that there were many men slain on both parts, at that Battle at Naseby.

*Thomas Rawlins* of Hanslop, in the county of Bucks, gent. sworn and examined, saith, That he did see the King near Foy in Cornwall, in or about the month of July, 1644, at the head of a party of horse; and this Deponent did see some soldiers plunder after the Articles of Agreement made between the King's Army and the Parliament's Forces; which soldiers were so plundered by the King's party not far distant from the person of the King.

*Thomas Read* of Maidstone, in the county of Kent, gent. sworn and examined, saith, That presently after the laying down of arms in Cornwall, between Lestwithiel and Foy, in or about the latter end of the month of August, or the beginning of September, 1644, he this Deponent did see the King in the head of a guard of horse,

*James Crosby* of Dublin in Ireland, barber, sworn and examined, saith, That at the first Fight at Newbury, about the time of barley-harvest 1643, he this Deponent did see the King riding from Newbury Town, accompanied with divers lords and gentlemen, towards the place where his forces were then fighting with the Parliament's Army.

*Samuel Burden* of Lyneham, in the county of Wilts, gent. sworn and examined, saith, That he this Deponent was at Nottingham in or about the month of August, 1642, at which time he saw a flag flying upon the tower of Nottingham castle; and that the next day afterwards he did see the King at Nottingham, when the said flag was still flying; which flag this Deponent then heard was the King's Standard.—He saith also, That he did afterwards see the King at Cropredy bridge in the head of his army, in a fallow field there; and did see the King in pursuit of sir William Waller's army, being then routed, which was about the month of July, 1644, and at that time this Deponent did see many people slain upon the ground.—And further this Deponent saith, That in or about the month of November, 1644, he did see the King at the last Fight at Newbury, riding up and down the field from regiment to regiment, whilst his army was there fighting with the Parliament's Forces; and this Deponent did see many men slain at that battle, on both sides.

*Michael Potts* of Sharpereton, in the county of Northumberland, vintner, sworn and examined, deposeseth, That he this Deponent saw the King in the head of the Army in the fields about a mile and a half from Newbury Town, upon the heath, the day before the Fight was, it being about harvest-tide in the year 1643.—And he further saith, That he saw the King on the day after, when the Fight was, standing near a great piece of ordnance in the fields.—And he further saith, That he saw the King in the second Newbury Fight in the head of his Army, being after or about Michaelmas, 1644.—And he further saith, That he saw a great many men slain at both the said battles.—And he further saith, That he saw the King in the head of his Army near Cropredy bridge in the year 1644.—And he further saith, That he saw the King in the head of his Army in Cornwall, near Lestwithiel, while the earl of Essex lay there with his forces about the middle of harvest, 1644.

*George Cornwall* of Aston, in the county of Hereford, ferry-man, aged 50 years, or thereabouts, sworn and examined, saith, That he, this Deponent, did see the King near Cropredy bridge, about the time of mowing of corn 1644, in the van of the Army there, and that he drew up his Army upon a hill, and faced the Parliament's Army; and that there was thereupon a skirmish between the King's and the Parliament's Army, where he, this Deponent, saw divers persons slain on both sides.

*Henry Gooche* of Grays-Inn, in the county of Middlesex, gent. sworn and examined. This Deponent saith, That upon or about the 30th day of September last, he, this Deponent, was in the Isle of Wight, and had access unto and discourse with the King, by the means of the lord marquis of Hertford and commissary Morgan: where this Deponent told the king, that his majesty had many friends; and that since his majesty was pleased to justify the Parliament's first taking up arms, the most of the presbyterian party, both soldiers and others, would stick close to him. To which the King answered thus, That he would have all his old friends know, that though for the present he was contented to give the Parliament leave to call their own war what they pleased, yet that he neither did at that time, nor ever should decline the justice of his own cause.—And this Deponent told the king, That his business was much retarded, and that neither col. Thomas, nor any other, could proceed to action, through want of commission. The King answered, That he being upon a Treaty, would not dishonour himself; but that if he, this Deponent, would take the pains to go over to the prince, his son, (who had full authority from him) he the said Deponent, or any for him, should receive whatsoever commissions should be desired; and to that purpose he would appoint the marquis of Hertford to write to his son in his name: and was pleased to express much joy and affection, that his good subjects would engage themselves for his restoration.

*Robert Williams* of the parish of St. Martin's, in the county of Cornwall, husbandman, aged 25 years, or thereabouts, sworn and examined, saith, That he, this Deponent, did see the king marching in the head of his army about September, 1644, a mile from Lestwithiel in Cornwall, in armour, with a short coat over it unbuttoned. And this Deponent further saith, That he saw him after that in St. Austell Downs, drawing up his army. And this Deponent saith, He did after that see the king in the head of his army near Foy, and that the earl of Essex and his army did then lie within one mile and a half of the king's army.

The Witnesses being examined as aforesaid, the Court adjourned for an hour.

25 Jan. 1649, post meridiem.

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President of this Court.

Daniel Blagrove.

John Okey.

Henry Marten.

John Carew.

Tho. Horton.

Sir Mich. Livesey, bt.

Owen Roe.

Sir J. Bourchier, kt.

Tho. Scot.

John Moore.

Oliver Cromwell.

Wm. Goffe.

Richard Deane.

Cornelius Holland.

Tho. Harrison.

Robert Lilbourne.

John Downes.

Edm. Ludlow.

Peregrine Pelham.

Sir Henry Mildmay.

John Jones.

Valeatine Wauton.

Sir Greg. Norton, bt.

Sir T. Maleverer, bt.

Adrian Scroope.

Henry Smith.

Anthony Stapeley.

John Huson.

Sir W. Coestable, bt.

John Berkstead.

Sir John Danvers.

Edw. Whalley.

Tho. Waite.

Wm. Purefoy.

Tho. Pride.

John Fry.

John Blackistone.

Sir Hard. Waller, kt.

John Venn.

Robert Tichbourne.

Humphrey Edwards.

Peter Temple.

Vincent Potter.

Wm. Cawley.

Isaac Ewers.

*Richard Price* of London, scrivener, was produced a Witness to the Charge against the King; who being sworn and examined, saith, That upon occasion of some tampering by the king's agents with the Independents in and about London, to draw them from the Parliament's cause to the king's party; and this being discovered by some of those so tampered with, unto sundry members of the Committee of Safety, who directed a carrying on of a seeming compliance with the king; he, this Deponent, did travel to Oxford in January, 1648, having a Safe-Conduct under the king's hand and seal, which he this Deponent knoweth to be so; for that the king did own it when he was told that this Deponent was the man that came to Oxon with that Safe-Conduct.—And this Deponent also saith, That after sundry meetings between him and the earl of Bristol, about the drawing of the Independents unto the King's cause against the Parliament, the substance of the discourse at which meetings, the said earl told this Deponent, was communicated to the king; he, this Deponent, was by the said earl brought to the king to confer further about that business; where the king declared, That he was very sensible that the Independents had been the most active men in the kingdom for the parliament against him: And thereupon persuaded this Deponent to use all means to expedite their turning to him and his cause. And for their better encouragement, the king promised in the word of a king, That if they, the Independents, would turn to him; and be active for him against the parliament, as they had been active for them against him, then he would grant them whatsoever freedom they would desire. And the King did then refer this Deponent unto the earl of Bristol, for the further prosecuting of the said business.—And the said Earl thereupon (this Deponent being withdrawn from the king) did declare unto this Deponent, and willed him to impart the same unto the Independents for their better encouragement, That the king's affairs prospered well in Ireland; That the Irish subjects had given the Rebels (meaning the Parliament's Forces) a great defeat; That the king had sent the lord Byron with a small party towards Cheshire, and that he was greatly multiplied, and had a considerable army, and was then before Nantwich, and would be strengthened with more soldiers out of Ireland, which were come

and expected daily. And when this Deponent was to depart out of Oxford, four Safe-Conducts with blanks in them, for the inserting of what names this Deponent pleased, were delivered to him, under the King's hand and seal. And one Ogle was sent out of Oxon with this Deponent, to treat about the delivering up of Ailsbury to the king, it being then a garrison for the parliament, and at the same time Oxford was a garrison for the king.

Several Papers and Letters of the King's, under his own hand, and of his own writing, and other papers, are produced, and read in open Court.

Mr. Thomas Challoner [a member of the house, Rushw.] also reporteth several Papers and Letters of the king's writing, and under the king's own hand.

After which the Court sat private.

The Court taking into consideration the whole matter in Charge against the King, passed these Votes following, as preparatory to the Sentence against the King, but ordered that they should not be binding finally to conclude the Court, viz.

“Resolved, upon the whole matter, That this Court will proceed to Sentence of Condemnation against Charles Stuart, king of England. That the Condemnation of the King shall be for a Tyrant, Traitor, and Murderer. That the Condemnation of the King shall be likewise for being a public Enemy to the commonwealth of England. That this Condemnation shall extend to Death.”

Memorandum, The last fore-mentioned Commissioners were present at these Votes.

The Court being then moved concerning the Deposition and Deprivation of the King before, and in order to that part of his Sentence which concerned his Execution, thought fit to defer the consideration thereof to some other time; and ordered the Draught of a Sentence grounded upon the said Votes, to be accordingly prepared by Mr. Scot, Mr. Marten, col. Harrison, Mr. Lisle, Mr. Say, commissary gen. Ireton and Mr. Love, or any three of them, with a blank for the manner of his Death.

Ordered, That the members of this Court, who are in or about London, and are not now present, be summoned to attend the service of this Court to-morrow at one o'clock in the afternoon: for whom summons were issued forth accordingly.

The Court adjourned itself till the morrow at one o'clock in the afternoon.

*Veneris, 26 Jan. 1649, post Merid.*

Painted Chamber.

Three Proclamations. The Court called.

The Commissioners present.

John Bradshaw, Serjeant at Law, Lord President of this Court.

Oliver Cromwell,  
Henry Ireton,\*  
Sir Hardress Waller,  
Valentine Wauton,  
Thomas Harrison,  
Edw. Whalley,  
Thomas Pride,  
Isaac Ewers,  
Th. I. Grey of Grooby,  
Sir John Danvers,  
Sir H. Mildmay, kt.  
Wm. Heveningham,  
Henry Marten,  
William Purefoy,  
John Blackistone,  
Gilbert Millington,  
Sir W. C. Constable, bt.  
Edmund Ludlow,  
John Hutchinson,  
Sir Mich. Livesey, bt.  
Robert Tichbourne,  
Owen Rowe,  
Adrian Scroope,  
John Dixwell,  
Simon Meyne,  
Peter Temple,  
Thomas Waite,  
Cornelius Holland,  
Thomas Scot,  
Francis Allen,  
Richard Deane,

John Okey,  
John Huson,  
John Carew,  
John Jones,  
Miles Corbet,  
William Goffe,  
Peregrine Pelham,  
John Moore,  
William Id. Mounson,  
Humphrey Edwards,  
Thomas Wogan,  
Sir Greg. Norton, bt.  
John Dove,  
John Venn,  
William Cawley,  
Anthony Stapely,  
John Downes,  
Thomas Horten,  
Thomas Hammond,  
John Lisle,  
Nicholas Love,  
Augustine Garland,  
George Fleetwood,  
James Temple,  
Daniel Blagrove,  
John Browne,  
Henry Smith,  
John Berkstead,  
Sir T. Maleverer, bt.  
Vincent Potter.

Sixty-two Commissioners present.

Here the Court sat private.

The Draught of a Sentence against the King is, according to the Votes of the 25th instant, prepared: and after several readings, debates, and amendments, by the Court thereupon,

“Resolved, &c. That this Court do agree to the Sentence now read. That the said Sentence shall be ingrossed. That the King be brought to Westminster to-morrow to receive his Sentence.”

The Court adjourned itself till the morrow at ten of the clock in the morning to this place; the Court giving notice, That they then intended to adjourn from thence to Westminster-hall.

\* He died in Ireland, where he was Lord Deputy, Nov. 26th, 1651. Whitelocke mentioning this event says, “This gentleman, colonel Ireton, was a person very active, industrious and stiff in his ways and purposes: he was of good abilities for council as well as action, and made much use of his pen, and was very forward to reform the proceedings in law, wherein his having been bred a lawyer was a help to him. He was stout in the field, and wary and prudent in his council, and exceedingly forward as to the business of a Common-Wealth. He married Cromwell's daughter, who had a great opinion of him, and no man could prevail so much nor order him so far as Ireton could. His death struck a great sadness into Cromwell, and indeed it was a great loss to him of so able and active, so faithful and so near a relation and officer under him.” Memorials, p. 491.

*Sabbati, 27 Jan. 1649, Painted Chamber.*

Three Proclamations being made, the Court is thereupon called.

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President.

Oliver Cromwell,	John Huson,
Henry Ireton,	William Goffe,
Sir Hardress Waller,	Cornelius Holland,
Valentine Wauton,	John Carew,
Thomas Harrison,	John Jones,
Edward Whalley,	Miles Corbet,
Thomas Pride,	Francis Allen,
Isaac Ewers,	Peregrine Pelham,
Th. l. Grey of Grooby,	Thomas Challoner,
Sir John Danvers,	John Moore,
Sir T. Maleverer, bt.	William Say,
Sir John Bourchier, kt.	John Alured,
Wm. Heveningham,	Henry Smith,
Henry Marten,	Humphrey Edwards,
William Purefoy,	Gregory Clement,
John Berkstead,	Thomas Wogan,
Matthew Tomlinson,	Sir Greg. Norton, bt.
John Blackstone,	Edmund Harvey,
Gilbert Millington,	John Venn,
Sir W. Constable, bt.	Thomas Scot,
Edmund Ludlow,	Thomas Andrews, ald.
John Hutchinson,	of London,
Sir Mich. Livesey, bt.	William Cawley,
Robert Titchbourne.	Anthony Stapeley,
Owen Rowe,	John Downes,
Robert Lilbourne,	Thomas Horton,
Adrian Scroope,	Thomas Hammond,
Richard Deane,	John Lisle,
John Okey,	Nicholas Love,
Augustine Garland,	Vincent Potter,
George Fleetwood,	John Dixwell,
James Temple,	Simon Meyne,
Daniel Blagrove,	Peter Temple,
John Brown,	Thomas Waite,

The Sentence agreed on, and ordered by this Court the 26th instant to be ingrossed, being accordingly ingrossed, was read.

"Resolved, that the Sentence now read, shall be the Sentence of this Court for the Condemnation of the King, which shall be read and published in Westminster-hall this day."

The Court hereupon considered of certain Instructions for the Lord President, to manage the Business of this day in Westminster-Hall; and ordered,

"That the Lord President do manage what Discourse shall happen between him and the King, according to his discretion, with the advice of his two Assistants: and that in case the King shall still persist in excepting against the Court's Jurisdiction, to let him know that the Court do still affirm their Jurisdiction.—That in case the King shall submit to the Jurisdiction of the Court, and pray a Copy of the Charge, that then the Court do withdraw and advise.—That in case the King shall move any thing else worth the Court's Consideration, the Lord President, upon advice of his said Assistants, do give order for the

Court's withdrawing to advise.—That in case the King shall not submit to answer, and there happen no such cause of withdrawing, that then the Lord President do command the Sentence to be read; but that the Lord President should hear the King say what he would before the Sentence, and not after."

"And thereupon it being further moved, Whether the Lord President should use any Discourse or Speeches to the King, as in the case of other Prisoners to be condemned was usual before the publishing of the Sentence, received general directions to do therein as he should see cause, and to press what he should conceive most seasonable and suitable to the occasion. And it was further directed, That after the reading of the Sentence, the Lord President should declare, That the same was the Sentence, Judgment and Resolution of the whole Court, and that the commissioners should thereupon signify their consent by standing up."

The Court forthwith adjourned itself to Westminster-Hall.

*Westminster-Hall, 27 Jan. 1649. P. M.*

The Lord President and the rest of the Commissioners come together from the Painted-Chamber to Westminster-Hall, according to their adjournment, and take their seats there, as formerly; and three Proclamations being made for Attendance and Silence, the Court is called.

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President of this Court.

John Lisle.	Francis Allen.
William Say.	Peregrine Pelham.
Oliver Cromwell.	Daniel Blagrove.
Henry Ireton.	Valentine Wauton.
Sir Hardress Waller, kt.	Thomas Harrison.
Sir John Bourchier, kt.	Edward Whalley.
Wm. Heveningham.	Thomas Pride.
Isaac Pennington, ald.	Isaac Ewers.
of London.	Th. l. d. Grey of Grooby.
Henry Marten.	Sir John Danvers.
William Purefoy.	Sir Tho. Maleverer, bt.
John Berkstead.	John Moore.
Matthew Tomlinson,	John Alured.
John Blackstone.	Henry Smith.
Gilbert Millington,	Humphrey Edwards.
Sir Wm. Constable, bt.	Gregory Clement.
Edmond Ludlow,	Thomas Wogan.
John Hutchinson.	Sir Gregory Norton, bt.
Sir Michael Livesey, bt.	Edmond Harvey.
Robert Titchbourne.	John Venn.
Owen Roe.	Thomas Scot.
Robert Lilbourne.	Thomas Andrews, ald.
Adrian Scroope.	of London.
Richard Deane.	William Cawley.
John Okey.	Anthony Stapeley.
John Huson.	John Downes.
William Goffe.	Thomas Horton.
Cornelius Holland.	Thomas Hammond.
John Carew.	Nicholas Love.
John Jones.	Vincent Potter.
Miles Corbet.	Augustine Garland.

John Dixwell.

George Fleetwood.

Simon Meyne.

James Temple.

Peter Temple.

Thomas Waite.

Sixty-seven Commissioners present.

The Prisoner is brought to the Bar, and Proclamation is again (as formerly) made for Silence; and the Captain of the Guard ordered to take into his custody all such as should disturb the Court.

The President stood up with an intention to address the People, and not to the Prisoner, who had so often declined the Jurisdiction of the Court; which the Prisoner observing, moved he might be heard before Judgment given. Whereof he received assurance from the Court, and that he should be heard after he had heard them first.

Whereupon the Court proceeded, and remembered the great assembly then present of what had formerly passed betwixt the Court and the Prisoner; the Charge against him in the Name of the People of England exhibited to them, being a Court constituted by the supreme Authority of England; his refusal three several days and times to own them as a Court, or to answer to the matter of his Charge; his thrice recorded Contumacy, and other his Contempts and Defaults in the precedent Courts. Upon which the Court then declared, That they might not be wanting to themselves, or to the trust reposed in them; and that no man's wilfulness ought to serve him to prevent Justice; and that they had therefore thought fit to take the substance of what had passed into their serious consideration, to wit, the Charge and the Prisoner's Contumacy, and the Confession which in the law doth arise upon that Contumacy, the notoriety of the fact charged, and other the circumstances material in the cause: and upon the whole matter, had resolved and agreed upon a Sentence then ready to be pronounced against the Prisoner. But that in regard of his desire to be further heard, they were ready to hear him as to any thing material, which he would offer to their consideration before the Sentence given, relating to the Defence of himself, concerning the matter charged; and did then signify so much to the Prisoner: Who made use of that leave given only to protest his respects to the Peace of the Kingdom, and Liberty of the Subject, and to say, That the same made him at last to desire, that having somewhat to say that concerned both, he might before the Sentence given be heard in the Painted Chamber before the Lords and Commons; saying, It was fit to be heard, if it were Reason which he should offer, whereof they were Judges. And pressing that point much, he was forthwith answered by the Court, and told,

That that which he moved was a declining of the Jurisdiction of the Court, whereof he had caution frequently given him.

That it tended to further Delay, of which he had been too much guilty.

That the Court being founded (as often had

been said) upon the Authority of the Commons of England, in whom rested the supreme Jurisdiction, the motion tended to set up another, or a co-ordinate Jurisdiction, in derogation of the Power whereby the Court sat, and to the manifest delay of their Justice; in which regard, he was told, they might forthwith proceed to Sentence: Yet for his further satisfaction of the entire pleasure and Judgment of the Court upon what he had then said, he was told, and accordingly it was declared, That the Court would withdraw half an hour.

The Prisoner by command being withdrawn, the Court make their recess into the room called the Court of Wards, considered of the Prisoner's motion, and gave the President direction to declare their dissent thereto, and to proceed to the Sentence.

The Court being again set, and the Prisoner returned, was, according to their direction, informed, That he had in effect received his Answer before the Court withdrew; and that their Judgment was (as to his motion) the same to him before declared, That the Court acted, and were Judges appointed by the highest Authority; and that Judges were not to delay, no more than to deny Justice; That they were good words in the great old Charter of England, "Nulli negabimus, nulli vendemus, nulli differemus justitiam vel rectum:" That their Duty called upon them to avoid further Delays, and to proceed to Judgment; which was their unanimous Resolution.

Unto which the Prisoner replied, and insisted upon his former Desires, confessing a Delay; but that it was important for the Peace of the Kingdom: and therefore pressed again with much earnestness to be heard before the Lords and Commons.

In answer whereto, he was told by the Court, That they had before fully considered of his Proposal, and must give him the same Answer to his renewed Desires; and that they were ready to proceed to Sentence, if he had nothing more to say.

Whereunto he subjoined, He had no more to say; but desired that might be entered which he had said.

Hereupon, after some discourse used by the President, for vindicating the Parliament's justice, explaining the nature of the Crimes of which the Prisoner stood charged, and for which he was to be condemned; and by way of exhortation to the Prisoner to a serious repentance for his High Transgressions against God and the people, and to prepare for his eternal condition,

The Sentence formerly agreed upon, and put down in parchment-writing, O Yes being first made for Silence, was, by the Court's command, solemnly pronounced and given. The tenor whereof followeth:

'Whereas the Commons of England, assembled in Parliament, have by their late Act, entitled, 'An Act of the Commons of England, assembled in parliament, for erecting of an High Court of Justice for the Try-

ing and Judging of Charles Stuart, king of England, authorized and constituted us an High Court of Justice for the Trying and Judging of the said Charles Stuart, for the Crimes and Treasons in the said act mentioned: By virtue whereof the said Charles Stuart hath been three several times convicted before this High Court; where the first day, being Saturday the 20th of Jan. inst. in pursuance of the said Act, a Charge of High Treason, and other High Crimes, was, in the behalf of the people of England, exhibited against him, and read openly unto him; wherein he was charged, That he the said Charles Stuart, being admitted King of England, and therein trusted with a limited power to govern by and according to the law of the land, and not otherwise; and by his Trust, Oath, and Office, being obliged to use the power committed to him, for the good and benefit of the people, and for the preservation of their Rights and Liberties; yet nevertheless, out of a wicked design to erect and uphold in himself an Unlimited and Tyrannical Power to rule according to his will, and to overthrow the Rights and Liberties of the People, and to take away and make void the foundations thereof, and of all redress and remedy of misgovernment, which by the fundamental constitutions of this kingdom were reserved on the people's behalf, in the Right and Power of frequent and successive Parliaments, or national Meetings in Council; he the said Charles Stuart, for accomplishment of such his Designs, and for the protecting of himself and his adherents in his and their wicked practices, to the same end, hath traitorously and maliciously levied War against the present Parliament, and people therein represented, as with the circumstances of time and place is in the said Charge more particularly set forth: And that he hath thereby caused and procured many thousands of the free people of this nation to be slain; and by divisions, parties, and insurrections within this land, by invasions from foreign parts, endeavoured and procured by him, and by many other evil ways and means, he, the said Charles Stuart, hath not only maintained and carried on the said War both by sea and land, but also hath renewed, or caused to be renewed, the said War against the Parliament and good people of this nation in this present year 1648, in several counties and places in this kingdom, in the Charge specified; and that he hath for that purpose given his Commission to his Son the Prince, and others, whereby, besides multitudes of other persons, many, such as were by the parliament intrusted and employed for the safety of this nation, being by him or his agents corrupted, to the betraying of their trust, and revolting from the Parliament, have had entertainment and commission for the continuing and renewing of the War and Hostility against the said Parliament and People: And that by the said cruel and unnatural War so levied, continued and re-

newed, much innocent blood of the free people of this nation hath been spilt, many families undone, the public Treasure wasted, Trade obstructed and miserably decayed, vast Expence and Damage to the nation incurred, and many parts of the land spoiled, some of them even to desolation: And that he still continues his Commission to his said Son, and other Rebels and Revolters, both English and foreigners, and to the earl of Ormond, and to the Irish Rebels and Revolters associated with him, from whom further invasions upon this land are threatened by his procurement, and on his behalf: And that all the said wicked Designs, Wars and evil Practices, of him, the said Charles Stuart, were still carried on for the advancement and upholding of the personal interest of Will, Power, and pretended Prerogative to himself and his family, against the public Interest, common Right, Liberty, Justice, and Peace of the People of this nation: And that he thereby hath been, and is the Occasioner, Author, and Contriver of the said unnatural, cruel, and bloody Wars, and therein guilty of all the Treasons, Murders, Rapines, Burnings, Spoils, Desolations, Damage, and Mischief to this Nation, acted and committed in the said Wars, or occasioned thereby. Whereupon the Proceedings and Judgment of this Court were prayed against him as a Tyrant, Traitor, and Murderer, and public Enemy to the Commonwealth, as by the said Charge more fully appeareth. To which Charge, being read unto him as aforesaid, he the said Charles Stuart was required to give his Answer; but he refused so to do. And upon Monday the 23d day of Jan. inst. being again brought before this Court, and there required to answer directly to the said Charge, he still refused so to do: Whereupon his Default and Contumacy was entered. And the next day, being the third time brought before the Court, Judgment was then prayed against him on the behalf of the People of England for his Contumacy, and for the Matters contained against him in the said Charge, as taking the same for confest, in regard of his refusing to answer thereto: Yet notwithstanding, this Court (not willing to take advantage of his Contempt) did once more require him to answer to the said Charge; but he again refused so to do. Upon which his several Defaults, this Court might justly have proceeded to Judgment against him, both for his Contumacy and the Matters of the Charge, taking the same for confest, as aforesaid.

Yet nevertheless this Court, for their own clearer information, and further satisfaction, thought fit to examine Witnesses upon oath, and take notice of other Evidences touching the Matters contained in the said Charge, which accordingly they have done.

Now therefore upon serious and mature deliberation of the premises, and consideration had of the notoriety of the Matters of Fact charged upon him, as aforesaid, this

'Court is in judgment and conscience satisfied that he the said Charles Stuart is guilty of levying War against the said Parliament and People, and maintaining and continuing the same; for which in the said Charge he stands accused, and by the general course of his Government, Counsels, and Practices, before and since this Parliament began (which have been and are notorious and public, and the effects whereof remain abundantly upon record), this Court is fully satisfied in their judgments and consciences that he hath been and is guilty of the wicked Designs and Endeavours in the said Charge set forth; and that the said War hath been levied, maintained, and continued by him, as aforesaid, in prosecution and for accomplishment of the said designs: And that he hath been and is the Occasioner, Author, and Continuer of the said unnatural, cruel, and bloody Wars, and therein guilty of High-Treason, and of the Murders, Rapines, Burnings, Spoils, Desolations, Damages, and Mischief to this Nation, acted and committed in the said War, and occasioned thereby. For all which Treasons and Crimes this Court doth adjudge, That he the said Charles Stuart, as a Tyrant, Traitor, Murderer, and public Enemy to the good people of this nation, shall be put to death by the severing his head from his body.'

This Sentence being read, the President spoke as followeth.

'The Sentence now read and published, is the Act, Sentence, Judgment and Resolution of the whole Court.'

Whereupon the whole Court stood up, and owned it.

The Prisoner being withdrawn, the Court adjourned itself forthwith into the Painted Chamber.

The Court being sat in the Painted Chamber, according to adjournment from Westminster-hall, aforesaid:

#### *Painted Chamber.*

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President.

John Lisle.	Henry Marten.
Wm. Say.	John Berkstead.
Oliver Cromwell.	Matthew Tomlinson.
Henry Ireton.	Gilbert Millington.
Sir Hardress Waller.	John Blackstone.
Tho. Waite.	Sir W. Constable, bt.
Tho. Harrison.	John Hutchinson.
Edw. Whalley.	Sir Mich. Livesey, bt.
Tho. Pride.	John Dixwell.
Isaac Ewers.	James Temple.
T. Id. Grey of Grooby.	Tho. Andrews, alderman of London.
Sir John Danvers.	Anthony Stapeley.
Sir T. Maleverer, bt.	Tho. Hammond.
Sir John Bouchier, kt.	Peter Temple.
Wm. Heveningham.	Edm. Ludlow.
Isaac Pennington, alderman of London.	Robert Tichbourne.
John Downes.	Nicholas Love.

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Owen Roe.  
Robert Lilbourne.  
Adrian Scroope.  
Richard Deane.  
John Okey.  
Simon Meyne.  
John Huson.  
Wm. Goffe.  
Cornelius Holland.  
John Carew.  
John Jones.  
Miles Corbet.  
Francis Allen.  
Peregrine Pelham.  
Tho. Challoner.

John Moore.  
John Alured.  
Henry Smith.  
Humphrey Edwards.  
Gregory Clement.  
Tho. Wogan.  
Sir Greg. Norton, bt.  
John Venn.  
Tho. Scot.  
Edm. Harvey.  
Wm. Cawley.  
Tho. Horton.  
Augustine Garland.  
Daniel Blagrave.

Sixty-four Commissioners present.

Sir Hardress Waller, col. Harrison, commissary-general Ireton, col. Deane and col. Okey, are appointed to consider of the time and place for the Execution of the Sentence against the King. And then the Court adjourned itself till Monday morning at eight of the clock to this place.

[The more full Account of this Day's Action, take as follows:]

The King being come in, in his wonted posture, with his hat on, some of the soldiers began to call for Justice, Justice, and Execution. But silence being commanded, his majesty began:

*King.* I desire a word to be heard a little, and I hope I shall give no occasion of interruption.

*Bradshaw* answered, You may answer in your time, hear the Court first.

*King.* If it please you, Sir, I desire to be heard, and I shall not give any occasion of interruption, and it is only in a word: a sudden Judgment—

*Bradshaw.* Sir, you shall be heard in due time, but you are to hear the Court first.

*King.* Sir, I desire, it will be in order to what I believe the Court will say; and therefore, Sir, an hasty Judgment is not so soon recalled.

*Bradshaw.* Sir, you shall be heard before the Judgment be given, and in the mean time you may forbear.

*King.* Well, Sir, shall I be heard before the Judgment be given?

*Bradshaw.* Gentlemen, it is well known to all, or most of you here present, that the Prisoner at the bar hath been several times convened and brought before this Court to make answer to a Charge of Treason, and other high Crimes exhibited against him in the Name of the People of England [Here a lady interposed, saying, 'Not half the people;'] but was silenced with threats\* to which Charge being required to answer, he hath been so far from obeying the commands of the Court by submitting to their justice, as he began to take

\* See the Trial of Daniel Axtell, Oct. 15th, 1660.

upon him to offer reasoning and debate unto the authority of the Court, and of the highest Court that constituted them to try and judge him: but being over-ruled in that, and required to make his Answer, he was still pleased to continue contumacious, and to refuse to submit or answer. Hereupon the Court, that they might not be wanting to themselves, to the trust reposed in them, nor that any man's wilfulness prevent justice, they have thought fit to take the matter into their consideration; they have considered of the Charge, they have considered of the Contumacy, and of that Confession, which in law doth arise upon that Contumacy: They have likewise considered of the notoriety of the fact charged upon this Prisoner, and upon the whole matter they are resolved, and are agreed upon a Sentence to be pronounced against this Prisoner: But in respect he doth desire to be heard, before the Sentence be read and pronounced, the Court hath resolved that they will hear him. Yet, sir, thus much I must tell you before-hand, which you have been minded of at other Courts, that if that which you have to say, be to offer any debate concerning the Jurisdiction, you are not to be heard in it; you have offered it formerly, and you struck at the root, that is, the power and supreme authority of the Commons of England, which this Court will not admit a debate of; and which indeed is an irrational thing in them to do, being a Court that acts upon Authority derived from them. But, sir, if you have any thing to say in defence of yourself concerning the matter charged, the Court hath given me in command to let you know they will hear you.

*King.* Since I see that you will not hear any thing of debate concerning that which I confess I thought most material for the Peace of the Kingdom, and for the Liberty of the Subject, I shall waive it; I shall speak nothing to it; but only I must tell you, That this many a day all things have been taken away from me, but that that I call more dear to me than my life, which is my conscience and my honour: And if I had a respect to my life more than the Peace of the Kingdom and the Liberty of the Subject, certainly I should have made a particular Defence for myself; for by that at leastwise I might have delayed an ugly Sentence, which I believe will pass upon me. Therefore, certainly, Sir, as a man that hath some understanding, some knowledge of the world, if that my true zeal to my country had not over-borne the care that I have for my own preservation, I should have gone another way to work than that I have done. Now, Sir, I conceive, that an hasty Sentence once passed, may sooner be repented of than recalled; and truly, the self-same desire that I have for the Peace of the Kingdom, and the Liberty of the Subject, more than my own particular ends, makes me now at last desire, that I have something to say that concerns both, before Sentence be given, that I may be heard in the Painted Chamber before the Lords and Com-

mons.\* This delay cannot be prejudicial to you, whatsoever I say; if that I say no reason, those that hear me must be judges; I cannot be judge of that that I have: if it be reason, and really for the Welfare of the Kingdom, and the Liberty of the Subject, I am sure on it, it is very well worth the hearing; therefore I do conjure you, as you love that that you pretend, I hope it is real, the Liberty of the Subject, the Peace of the Kingdom, that you will grant me this hearing before any Sentence be past. I only desire this, that you will take this into your consideration, it may be you have not heard of it before-hand; if you will, I'll retire, and you may think of it: but if I cannot get this Liberty, I do protest, that these fair shews of Liberty and Peace are pure shews, and that you will not hear your King.

*Bradshaw.* Sir, you have now spoken.

*King.* Yes, Sir.

*Bradshaw.* And this that you have said is a further declining of the Jurisdiction of this Court, which was the thing wherein you were limited before.

*King.* Pray excuse me, Sir, for my interruption, because you mistake me; it is not a declining of it, you do judge me before you hear me speak: I say it will not, I do not decline it, though I cannot acknowledge the Jurisdiction of the Court; yet, Sir, in this give me leave to say, I would do it, though I did not acknowledge it: in this I do protest it is not the declining of it, since I say, if that I do say any thing, but that that is for the Peace of the Kingdom and the Liberty of the Subject, then the shame is mine. Now I desire that you will take this into your consideration; if you will, I'll withdraw.

*Bradshaw.* Sir, this is not altogether new that you have moved to us, not altogether new to us, though the first time in person that you have offered it to the Court. Sir, you say you do not decline the jurisdiction of the Court.

*King.* Not in this that I have said.

*Bradshaw.* I understand you well, Sir; but nevertheless that which you have offered seems to be contrary to that saying of your's; for the Court are ready to give a sentence; it is not as you say, That they will not hear their King; for they have been ready to hear you, they have patiently waited your pleasure for three Courts together, to hear what you would say to the People's Charge against you, to which you have not vouchsafed to give any Answer at all. Sir, this tends to a further delay. Truly, Sir, such delays as these neither may the Kingdom nor Justice well bear; you have had three several days to have offered in this kind what you would have pleased. This Court is

\* Some have thought this was a Proposal of renouncing the Crown in favour of his eldest son. Rapin says, "It is generally believed, he intended to propose to the parliament, that he would abdicate the crown in favour of his eldest son."

founded upon that Authority of the Commons of England, in whom rests the supreme Jurisdiction; that which you now tender, is to have another Jurisdiction, and a co-ordinate Jurisdiction. I know very well you express yourself, Sir, that notwithstanding that you would offer to the Lords and Commons in the Painted Chamber, yet nevertheless you would proceed on here, I did hear you say so. But, Sir, That you would offer there, whatever it is, must needs be in delay of the Justice here; so as if the Court be resolved, and prepared for the Sentence, this that you offer they are not bound to grant. But, Sir, according to that you seem to desire, and because you shall know the further pleasure of the Court upon that which you have moved, the Court will withdraw for a time.

[“ This he did to prevent the disturbance of their scene by one of their own members, col. John Downes, who could not stifle the reluctance of his conscience, when he saw his majesty press so earnestly for a short hearing: but declaring himself unsatisfied, forced them to yield to the King's request.” *Nelson.*]

*King.* Shall I withdraw?

*Bradshaw.* Sir, you shall know the pleasure of the Court presently.

The Court withdraws for half an hour into the Court of Wards.

*Serjeant at Arms.* The Court gives command, that the Prisoner be withdrawn; and they give order for his return again.

[“ Then withdrawing into the Chamber of the Court of Wards, their business was not to consider of his majesty's Desire, but to chide Downes, and with reproaches and threats to harden him to go through the remainder of their villainy with them.” *Nelson.*]

Which done, they return; and being sat, Bradshaw commanded—“ Serjeant at Arms, send for your Prisoner.” Who being come,

*Bradshaw* proceeded. Sir, you were pleased to make a motion here to the Court, to offer a desire of yours, touching the propounding of somewhat to the Lords and Commons in the Painted Chamber, for the Peace of the Kingdom. Sir, you did, in effect, receive an Answer before the Court adjourned; truly, Sir, their withdrawing and adjournment was *pro forma tantum*; for it did not seem to them that there was any difficulty in the thing: they have considered of what you have moved, and have considered of their own Authority, which is founded, as hath been often said, upon the supreme Authority of the Commons of England, assembled in parliament. The Court acts according to their Commission. Sir, the return I have to you from the Court is this: That they have been too much delayed by you already, and this that you now offer hath occasioned some little further delay; and they are Judges appointed by the highest Authority; and Judges are no more to delay, than they are to deny Justice: they are good words in

the great old Charter of England; “ Nulli negabimus, nulli vendemus, nulli differemus justitiam.” There must be no delay; but the truth is, Sir, and so every man here observes it, that you have much delayed them in your contempt and default, for which they might long since have proceeded to Judgment against you; and, notwithstanding what you have offered, they are resolved to proceed to Punishment and to Judgment, and that is their unanimous Resolution.\*

*King.* Sir, I know it is in vain for me to dispute; I am no sceptic for to deny the power that you have; I know that you have power enough. Sir, I must confess, I think it would have been for the Kingdom's Peace, if you would have taken the pains to have shewn the lawfulness of your Power: for this Delay that I have desired, I confess it is a delay, but it is a delay very important for the Peace of the Kingdom: for it is not my person that I look at alone, it is the Kingdom's welfare, and the Kingdom's Peace; it is an old sentence, That we should think on long before we resolve of great matters suddenly. Therefore, Sir, I do say again, that I do put at your doors all the inconvenience of a hasty Sentence. I confess I have been here now, I think, this week; this day eight days was the day I came here first, but a little delay of a day or two farther may give Peace whereas a hasty Judgment may bring on that trouble and perpetual inconvenience to the kingdom, that the child that is unborn may repent it; and therefore again, out of the duty I owe to God and to my country, I do desire that I may be heard by the Lords and Commons in the Painted Chamber, or any other chamber that you will appoint me.

*Bradshaw.* Sir, you have been already answered to what you even now moved, being the same you moved before, since the Resolution and the Judgment of the Court in it; and the Court now requires to know whether you have any more to say for yourself, than you have said, before they proceed to Sentence.

*King.* I say this, Sir, That if you hear me, if you will give me but this Delay, I doubt not but I shall give some satisfaction to you all here, and to my people after that; and therefore I do require you, as you will answer it at

\* Whitelocke says, “ Many of the Commissioners in the debate of it” (the Resolution that what the King had tendered tended to delay, &c.) “ in the Court of Wards, were against this Resolution, and pressed to satisfy the King's desire, and themselves to hear what the King would say to them in the Painted Chamber, before Sentence; but it was voted by the major part in the negative. Upon which colonel Harvey, and some others of the Commissioners, went away in discontent, and never sate with them afterwards. This proposal of the King's being denied by the Commissioners, the King thereupon declared himself, *that he had nothing more to say.*”

the dreadful Day of Judgment, that you will consider it once again.

*Bradshaw.* Sir, I have received direction from the Court. *King.* Well, Sir.

*Bradshaw.* If this must be re-enforced, or any thing of this nature, your Answer must be the same; and they will proceed to Sentence, if you have nothing more to say.

*King.* Sir, I have nothing more to say; but I shall desire that this may be entered what I have said.

*Bradshaw.* The Court then, Sir, hath something to say unto you; which, although I know it will be very unacceptable, yet notwithstanding they are willing, and are resolved to discharge their duty.

["Then Bradshaw went on in a long Harangue, endeavouring to justify their Proceedings, misapplying Law and History, and raking up and wresting whatsoever he thought fit for his Purpose, alledging the Examples of former Treasons and Rebellions, both at Home and abroad, as authentic proofs; and concluding, That the King was a Tyrant, Traitor, Murderer, and public Enemy to the Commonwealth of England. His majesty having with his wonted patience heard all these reproaches, answered:" *Nelson.*]

*King.* I would desire only one word before you give Sentence; and that is, That you would hear me concerning those great Imputations that you have laid to my Charge.

*Bradshaw.* Sir, you must give me now leave to go on; for I am not far from your Sentence, and your time is now past.

*King.* But I shall desire you will hear me a few words to you; for truly, whatever Sentence you will put upon me; in respect of those heavy Imputations, that I see by your Speech you have put upon me; Sir, It is very true, that—

*Bradshaw.* Sir, I must put you in mind; Truly, Sir, I would not willingly, at this time especially, interrupt you in any thing you have to say that is proper for us to admit of; but Sir, you have not owned us as a Court, and you look upon us as a sort of people met together; and we know what language we receive from your party. *King.* I know nothing of that.

*Bradshaw.* You disavow us as a Court; and therefore for you to address yourself to us, not to acknowledge us as a Court to judge of what you say, it is not be permitted. And the truth is all along, from the first time you were pleased to disavow and disown us, the Court needed not to have heard you one word: for unless they be acknowledged a Court, and engaged, it is not proper for you to speak. Sir, we have given you too much liberty already, and admitted of too much delay, and we may not admit of any farther. Were it proper for us to do, we should hear you freely, and we should not have declined to have heard you at large, what you could have said or proved on your behalf, whether for totally excusing, or for in part excusing those great and heinous Charges that in whole or in part are laid upon you. But, Sir,

I shall trouble you no longer; your sins are of so large a dimension, that if you do but seriously think of them, they will drive you to a sad consideration, and they may improve in you a sad and serious repentance: and that the Court doth heartily wish that you may be so penitent for what you have done amiss, that God may have mercy, at least-wise, upon your better part: truly, Sir, for the other, it is our part and duties to do that which the law prescribes. We are here not *ius dars*, but *ius dicere*. We cannot be unmindful of what the Scripture tells us, 'For to acquit the Guilty is of equal abomination, as to condemn the Innocent.' We may not acquit the guilty. What Sentence the law affirms to a Traitor, Tyrant, a Murderer, and a public Enemy to the Country, that sentence you are now to hear read unto you; and that is the Sentence of the Court.

Make an O-yes, and command silence while the Sentence is read.—Which done,

The Clerk read the SENTENCE,  
(drawn up in parchment:)

"Whereas the Commons of England in Parliament had appointed them an High Court of Justice, for the Trial of Charles Stuart, king of England, before whom he had been three times convened; and at the first time a Charge of High Treason, and other Crimes and Misdemeanours, was read in the behalf of the kingdom of England," &c. [Here the Charge was repeated.] "Which Charge being read unto him, as aforesaid, he the said Charles Stuart was required to give his Answer; but he refused so to do:" [expressing the several Passages of his refusing, in the former Proceedings.] "For all which Treasons and Crimes this Court doth adjudge, That he the said Charles Stuart, as a Tyrant, Traitor, Murderer, and a public Enemy, shall be put to death, by the severing of his Head from his Body."

Which being read,

*Bradshaw* added; The Sentence now read and published is the Act, Sentence, Judgment, and resolution of the whole Court.

To which they all expressed their assent by standing up as was before agreed and ordered.

His Majesty then said, Will you hear me a word, Sir?

*Bradshaw.* Sir, you are not to be heard after the Sentence. *King.* No, Sir?

*Bradshaw.* No, Sir; by your favour, Sir, Guard, withdraw your Prisoner

*King.* I may speak after Sentence, by your favour, Sir: I may speak after my Sentence, ever. By your Favour (Holla!), the Sentence. Sir—I say, Sir, I do—I am not suffered to speak: expect what justice other people will have.

[His Majesty being taken away by the Guard, as he passed down the stairs, the insol-

\* "Bradshaw," says Whitelock, under date Oct. 31, 1650, "died of a quartan ague which had held him a year; a stout man and learned in his profession: No friend of monarchy."

lent Soldiers scoffed at him, casting the smoke of their tobacco, a thing very distasteful unto him, in his face, and throwing their pipes in his way; and one more insolent than the rest, spitting in his face\*, his majesty, according to his wonted heroic patience, took no more notice of so strange and barbarous an indignity, than to wipe it off with his handkerchief.

As he passed along, hearing the rabble of Soldiers crying out, 'Justice!' 'Justice!' he said, 'Poor souls, for a piece of Money they would do so for their commanders.'

Being brought first to sir Robert Cotton's, and thence to Whitehall, the soldiers continued their brutish carriage toward him, abusing all that seemed to shew any respect, or any pity to him; not suffering him to rest in his chamber, but thrusting in, and smoking their tobacco, and disturbing his privacy. But through all these trials, unusual to princes, he passed with such a calm and even temper, that he let fall nothing unbecoming his former majesty and magnanimity.

In the evening, a Member of the Army acquainted the Committee, with his majesty's Desire, That seeing they had passed a Sentence of Death upon him, and his time might be nigh, he might see his Children; and Dr. Juxon, bishop of London, might be admitted to assist him in his private Devotions, and receiving the Sacrament. Both which at length were granted. †

And the next day, being Sunday, he was attended by the guard to St. James's,] where the

\* See the Trial of Garland, A. D. 1660, *post*.

† Ludlow, Mem. vol. 1, p. 241, after mentioning that the King refused such ministers as the Court appointed to attend him, relates, in a tone of spleen and contempt very little creditable to his feelings, some particulars of Juxon's attendance upon his Majesty.

‡ Clement Walker, in his History of Independence, part 2, s. 90, says, "28th Jan. Being the last Sabbath the King kept in this life, some of the grantees of the army and parliament tendered to the King a Paper book with promise of life and some shadow of regality, as I hear, if he subscribed it. It contained many particulars destructive to the Fundamental Government, Religion, Laws, Liberties and Property of the People. One whereof was instanced to me; viz. that the King should, amongst many other demands, pass an act of parliament for keeping on foot the Militia of this army, during the pleasure of the grantees who should be trusted with that Militia, and with power from time to time to recruit and continue them to the number of 40,000 horse and foot under the same general and officers; with power, notwithstanding, in the Council of War to chuse new officers and generals from time to time as occasion shall happen, and they think fit, and to settle a very great Tax upon the people by a Land Rate for an established pay for the Army, to be collected and levied by the Army themselves; and a Court

bishop preached before him upon these words, "In the Day when God shall judge the Secrets of all Men by Jesus Christ according to my Gospel. *Nelson.*"

Martial of an exorbitant extent and latitude. His majesty (as I heard) read some few of the Propositions, and throwing them aside, told them he would rather become a sacrifice for his People than betray their Laws and Liberties, Lives and Estates, together with the Church and Commonwealth, and the honour of his crown, to so intolerable a bondage of an armed faction." *Clarendon* says nothing of this, nor does *Hume* repeat it.

\* "Sunday Jan. 28, the King was attended by a Guard from Whitehall to St. James's; where the Bishop of London, after Prayers, preached before him on these words, Rom. 2, 16. 'In the Day when God shall judge the secrets of all men by Jesus Christ according to my Gospel.' Upon which he explained the doctrine of a future Judgment, and made an application suited to the sad Occasion, and after that administered the Sacrament. The King spent the remainder of the day in prayer and meditation, and pious conference with the good Bishop, avoiding all interruption, and for that reason refusing to admit the Prince Elector, the duke of Richmond, marquis of Hertford, earls of Southampton and Lindsey, and some others, who came to offer their last duties to him; but, said the King, 'My time is short and precious, and I am desirous to improve it the best I may in preparation: I hope they will not take it ill that none have access to me but my Children: the best office they can do now, is to pray for me.'

"Monday Jan. 29, the King's Children being brought to take their leave of him, he first gave his blessing to the lady Elizabeth, and bid her remember to tell her brother James, whenever she should see him, that 'it was his Father's last desire, that he should no more look upon Charles as his eldest brother only, but be obedient unto him as his Sovereign; and that they should love one another, and forgive their Father's enemies.' Then said the King to her, 'Sweet-heart, you will forget this.' 'No,' said she, 'I shall never forget it whilst I live.' He wished her not to grieve and torment herself for him; for 'it would be a glorious death that he should die, it being for the Laws and Liberties of this Land, and for maintaining the true Protestant religion.' He bid her read bishop Andrews's Sermons, Hooker's Ecclesiastical Policy, and bishop Laud's Book against Fisher, which would ground her against Popery. He told her, 'He had forgiven all his enemies, and hoped God would forgive them.' He bid her tell her Mother, that 'his thoughts had never strayed from her, and that his love should be the same to the last.'

"Then taking the duke of Gloucester on his knees, he said, 'Sweet-heart, now they will

*Lane, 20 Jan. 1649. Painted Chamber.*

Three Proclamations made. The Court is called.

John Bradshaw, Serjeant at Law, Lord President of this Court.

Oliver Cromwell, Valentine Wauton,  
Henry Ireton, Thomas Harrison,  
Sir Hard. Waller, kt. Edward Whalley,

Thomas Pride,  
Isaac Ewers,  
Richard Ingoldsby,  
Th. l. Grey of Grooby,  
Sir J. Bourchier, kt.  
Henry Marten,  
William Purefoy,  
John Berkstead,  
John Blackistone,

Gilbert Millington,  
Sir W. Constable, bt.  
Edmond Ludlow,  
John Hutchinson,  
Sir Mich. Livesey, bt.  
James Temple,  
John Dixwell,  
Peter Temple,  
Robert Titchbourne,

'cut off thy father's head,' (upon which Words the Child looked very stedfastly upon him) 'Mark Child what I say; they will cut off my head, and perhaps make thee a King: but mark what I say, You must not be a King so long as your brother Charles and James do live; for they will cut off your Brother's Heads (when they can catch them) and cut off thy head too at last; and therefore I charge you do not be made a King by them.' At which the Child sighing, said, 'I will be torn in pieces first:' which falling so unexpectedly from one so young, it made the King rejoice exceedingly. At parting, the King commanded them both to be obedient to their Mother, and bid the lady Elizabeth send his blessing to the rest of her Brothers and Sisters, with commendation to all his friends.

"The Prince, then in Holland, had conveyed a Letter to his majesty by Mr. Seamour, and by the States Ambassadors had interceded with the Parliament, and used all possible means with the Army, to prevent, or at least to defer, the Execution. But all in vain; for a Warrant was this Day signed and sealed by 59 of those execrable Judges, directed to colonel Francis Hacker, colonel Huncks, and lieutenant-colonel Phray, and to every of them, 'Willing and requiring them to see the said Sentence executed in the open Street before Whitehall, upon the morrow, being the 30th day of this instant month of January, between the hours of ten in the morning and five in the afternoon of the same day, with full effect.' Which original Warrant has been lately discovered, and now remains a Record of Infamy to this nation.

"Tuesday Jan. 30, the King having slept soundly for about four hours, awakened near two hours before day; and calling to Mr. Herbert, who lay by his bed-side, bid him rise; 'For' (says the King) 'I will get up, having a great Work to do this day. Herbert, This is my second Marriage-Day: I would be as trim to day as may be, for before night I hope to be espoused to my blessed Jesus.' He then appointed what cloaths he would wear; and, says he, 'Let me have a shirt on more than ordinary, by reason the season is so sharp as probably may make me shake: which some observers will imagine proceeds from fear: I would have no such imputation; I fear not Death; death is not terrible to me: I bless my God, I am prepared.' Soon after the King was dressed, came Dr. Juxon bishop of London, precisely at the time his majesty had the night before appointed; and being first an

hour in private with him, called in Mr. Herbert, and prayed in the Prayers of the Church, reading the 27th Chapter of St. Matthew, which relates the Passion of our Saviour. After Service, the King thanked the Bishop for making choice of that Chapter, being so applicable to his present condition: the Bishop replied, 'May it please your gracious majesty, it is the proper Lesson for the day, as appears by the Calender.' At which the King was much affected, and thought it a providential Preparation for his Death.

"About ten o'clock colonel Hacker knocked easily at the King's chamber-door; and knocking louder a second time, the King commanded Mr. Herbert to go to the door, who demanding why he knocked? Hacker said, He would speak with the King: the King said, 'Let him come in.' He came in trembling, and told his majesty, It was time to go to Whitehall, where he might have some farther time to rest. 'Well,' (says the King) 'Go forth, I will come presently.' Soon after, the King took the Bishop by the hand, and said, 'Come, let us go;' and spoke thus to Mr. Herbert, 'Open the Door, Hacker has given us a second Warning.' The King passed through the Garden into the Park, where several Companies of Foot were drawn up, and made a Guard on each side, the Bishop walking on the King's right-hand, and colonel Thomlinson on his left, both bare-headed: the King walked very fast, and calling on them to walk faster, said, 'He now went before them to strive for a heavenly Crown, with less solicitude than he had often encouraged his Soldiers to fight for an earthly diadem.' At the end of the Park the King went up the Stairs leading to the Long Gallery, and so into the Cabinet-Chamber, where, after several Prayers and pious Discourse, about twelve he eat a bit of bread, and drank a glass of Claret. Soon after colonel Hacker came to the Chamber-door, and gave his last signal. The Bishop and Mr. Herbert weeping fell upon their knees, and the King gave them his hand to kiss, and helped up the aged Bishop, and said, 'Open the Door;' and bidding Hacker go on, said, 'I'll follow.' So he was conducted through the Banqueting-house to the Scaffold by a passage made through a window. Many Companies of Foot and troops of horse were placed to keep off the spectators, whereby his majesty was disappointed of speaking to the People: and therefore directing himself chiefly to colonel Thomlinson, he said, &c." 3 Kenn. Compl. Hist. 170.

Owen Roe,  
Adrian Scroope,  
Richard Deane,  
John Okey,  
John Huson,  
William Goffe,  
John Jones,  
Francis Allen,  
Peregrine Pelham,  
John Autaby,  
William Say,  
Henry Smith,

Humphrey Edwards,  
John Venn,  
Thomas Scot,  
William Cawley,  
Thomas Horton,  
John Lisle,  
Nicholas Love,  
Vincent Potter,  
Augustine Garland,  
Simon Meyne,  
Daniel Blagrave.

Forty-eight Commissioners present.

Upon Report made from the Committee for considering the Time and Place of the executing of the Judgment against the King, that the said Committee have resolved, That the open street before Whitehall is a fit Place, and that the said Committee conceive it fit that the King be there executed the morrow, the King having already notice thereof: The Court approved thereof, and ordered a Warrant to be drawn for that purpose. Which said Warrant was accordingly drawn and agreed unto, and ordered to be engrossed; which was done, and signed and sealed accordingly, as followeth, viz.

*At the High Court of Justice for the Trying and Judging of Charles Stuart King of England, Jan. 29, 1649.*

‘Whereas Charles Stuart, King of England, is and standeth convicted, attainted and condemned of High Treason, and other High Crimes; and Sentence upon Saturday last was pronounced against him by this Court, to be put to death, by the severing of his head from his body, of which Sentence execution yet remaineth to be done: These are therefore to will and require you to see the said Sentence executed in the open street before Whitehall, upon the morrow, being the thirtieth day of this instant month of January, between the hours of ten in the morning, and five in the afternoon of the same day, with full effect: And for so doing, this shall be your sufficient Warrant. And these are to require all officers, soldiers, and others, the good people of this Nation of England, to be assisting unto you in this service.’

Given under our Hands and Seals.

To Colonel Francis Hacker,\* Col. Hunks, and Lieut. Col. Phray, and to every of them.

\* From an Engraving of the Original, now in the custody of the House of Lords, and published by the Antiquarian Society, 1750. For the story related by Hume, and alluded to by Ludlow, of Cromwell and Martin blackening each other's face while this Warrant was under signature, see the Trial of Henry Martin, A. D. 1660, Post.

“There be grounds for the charity of thinking, that general Fairfax was not consenting to the King's Murder, but was amused by Cromwell to the very Day of Execution, and even

Sealed and subscribed by

John Bradshaw,	John Danvers,
Tho. Grey,	John Bourchier,
Oliver Cromwell,	Henry Ireton,
Edw. Whalley,	Thomas Maleverer,
Michael Livesey,	John Blackstone,
John Okey,	John Hutchinson,

then drawn by him into seeking God by Prayer, till the blow was over. Sir Thomas Herbert assures us, That while the Bishop and he were going with the King's body to be embalmed, he stepped into the Long Gallery, and the General there meeting him, asked him, ‘How the King did?’ Which he at first thought strange; but he afterward perceived, that the General knew not what had passed, being all that morning using his power and interest to have the Execution deferred for some days, forbearing to come among the officers, and fully resolving with his own regiment to prevent the blow, or to defer it till he could make a party in the army to second his design: but being with the officers of the army then at prayer in colonel Harrison's apartment, he came from thence without knowledge of the matter, and was much surprised when Mr. Herbert told him of it.” 3 Kenn. Compl. Hist. 172.

Hume says, “A fresh instance of hypocrisy was displayed the very day of the King's death. The generous Fairfax, not content with being absent from the Trial, had used all the interest which he yet retained, to prevent the execution of the fatal Sentence; and had even employed persuasion with his own regiment, though none else would follow him, to rescue the King from his disloyal murderers. Cromwell and Ireton, informed of this intention, endeavoured to convince him, that the Lord had rejected the King; and they exhorted him to seek by prayer some direction from heaven on this important occasion: but they concealed from him that they had already signed the warrant for the execution. Harrison was the person appointed to join in prayer with the unwary general. By agreement, he prolonged his doleful cant, till intelligence arrived, that the fatal blow was struck. He then rose from his knees, and insisted with Fairfax, that this event was a miraculous and providential answer, which heaven had sent to their devout supplications.”

This anecdote is *ben trovato*, and has with it a dramatic air, in favour of which Mr. Hume's style of writing history, disposes him on all occasions to sacrifice a scrupulous attention to authenticity. But there is scarcely a possibility of its truth. The part assigned to Harrison is grossly incongruous with his character, and the whole story is contradicted by the evidence of colonel Huncks on the Trial of colonel Hacker, Oct. 15, 1660, post. For these reasons it is rightly rejected by Harris. See his Life of Oliver Cromwell, note (G. G.), in which he investigates the principal share which Cromwell had in bringing about the death of Charles. Some particulars of the Application in favour of Charles by the Dutch Ambassadors, and of

William Goffe,\*  
 Thomas Pride,  
 Peter Temple,  
 Thomas Harrison,  
 John Huson,  
 Henry Smith,  
 Peregrine Pelham,  
 Simon Meyus,  
 Thomas Horton,  
 John Jones,  
 John Moor,  
 Hardress Waller,  
 Gilbert Millington,  
 George Fleetwood,†  
 John Alured,  
 Robert Littlebourne,  
 William Say,  
 Anthony Stapelay,  
 Richard Deane,  
 Robert Tichbourne,  
 Humphry Edwards,  
 Daniel Blagrove,  
 Owen Rowe,  
 William Porsfoy,

Adrian Seroepe,  
 James Temple,  
 Augustine Garland,  
 Edmund Ludlow,  
 Henry Marten,  
 Vincent Potter,  
 William Constable,  
 Richard Ingoldsby,  
 William Cawley,  
 John Berkstead,  
 Isaac Ewers,  
 John Dixwell,  
 Valentine Wauton,  
 Gregory Norton,  
 Thomas Challoner,  
 Thomas Wogan,  
 John Ven,  
 Gregory Clement,  
 John Downes,  
 Thomas Waite,†  
 Thomas Scot,  
 John Carew,  
 Miles Corbet,

It was ordered, That the Officers of the Ordinance within the Tower of London, or any other Officer or Officers of the Store within the said Tower, in whose hands or custody the bright Execution Ax for the executing Malefactors is, do forthwith deliver unto Edward Deady, esq. Sergeant at Arms attending this Court, or his Deputy or Deputies, the said Ax. And for their or either of their so doing, this shall be their Warrant.

To Col. John White, or any other  
 Officer within the Tower of London,  
 whom it concerneth.

Martu, 30 Jan. 1649. Painted Chamber.

Commissioners meet.

Ordered, That Mr. Marshall, Mr. Nye, Mr. Caryl, Mr. Salway, and Mr. Dell, be desired to attend the King, to administer to him those Spiritual Helps as should be suitable to his present condition. And lieutenant-colonel Goffe is desired forthwith to repair unto them for that purpose.

Who did so, but after informed the Court, That the King being acquainted therewith, refused to confer with them; expressing, that he would not be troubled with them.

Ordered, That the Scaffold upon which the King is to be executed, be covered with black.

the Answer of the Lords, after the King's Execution, "that the Lord had disposed of him," may be found in 3 Cobb. Parl. Hist. 1279—1284. Lord Clarendon, as is stated there, gives a very particular account of the motives and other circumstances of the Embassy.

\* This Name is not legible in the Original. Several more of them are very difficult to read; probably by design. See, as to this, Harris's Life of Cromwell, Note (G G), and Clarendon as there cited.

† See the Trials of the Regicides, *infra*.

The Bishop of London read divine service before his Majesty; and the 27th of St. Matthew, the History of our Saviour's Passion, being appointed by the Church for that day, he gave the Bishop thanks for his seasonable choice of the Lesson; but the Bishop acquainting him that it was the service of the day, it comforted him exceedingly; then he proceeded to receive the Holy Sacrament. His devotions being ended, he was brought from St. James's.\*

\* We have seen (p. 1130) that on Sunday the 28th, the King was taken to St. James's; (see Hacker's Trial, A. D. 1660, *infra*). Nevertheless Clement Walker in his History of Independency, p. 110, says, "The King lay Sunday night so near the place appointed for the separation of his soul and body, that he might hear every stroke the workmen gave upon the scaffold, where they wrought all night. This is a new device to mortify him, but it would not do." Hume, vol. 7, p. 143, citing as his authority Walker, says, "Every night during the interval between the sentence and the execution of the King, he slept sound as usual, the noise of the workmen employed in framing the scaffold and other preparations for his execution, continually resounded in his ears."

Upon this, Laing, 3 Hist. of Scotland, 397, (n. 63), observes: "That his slumbers were disturbed each night by the noise of erecting his scaffold, is an injudicious fiction, first invented by Clement Walker in order to aggravate the deed. Herbert attended the king's person and slept in his chamber, from the beginning of his Trial to the last hour of his life. But that Hume should assert, on such authority as Clement Walker, a fact contradicted by every other historian, is the more surprising, as Herbert's Memoirs lay open before him; and from the copy in the Advocates' Library, now in my hands, appear to be marked with his pencil at the very passage (p. 117), which mentions that the king was removed, two hours after his Trial, from Whitehall to St. James's. But, on this occasion, Hume wrote too much for dramatic effect."

Fox writing to Mr. Laing says, "I had detected the trick of Hume's theatrical and false representation of Charles the First hearing the noise of his scaffold, but did not know that he had had Herbert's authentic account so lately under his eye. In general, I think you treat him (Hume) too tenderly. He was an excellent man, and of great powers of mind, but his partiality to kings and princes is intolerable. Nay, it is, in my opinion, quite ridiculous, and is more like the foolish admiration which women and children sometimes have for kings, than the opinion, right or wrong, of a philosopher." See Lord Holland's Preface to Mr. Fox's History of the early part of the reign of King James the Second, p. xx.—Oldmixon and Mrs. Macaulay (Hist. vol. 4, p. 415), had before noticed the falsehood of Walker's tale, though, indeed, Mrs. Macaulay's account is not very accurate. In a pamphlet intitled, "King Charles his Speech

to Whitehall, by a regiment of foot, besides his private guard of portsmans; the bishop of London on the one hand, and colonel Tomlinson, who had the charge of him, on the other, bare-headed. The Guards marching a slow pace, the King bid them go faster, saying, That he now went before them to strive for an heavenly crown. Being come to the end of the Park, he went up the stairs leading to the Long-Gallery in Whitehall, where formerly he used to lodge, and there finding an unexpected delay, the scaffold being not ready, he past most of the time in prayer. About twelve o'clock, (his Majesty having eat a bit of bread, and drank a glass of claret), colonel Hacker, with other officers and soldiers, brought the King, with the Bishop, and colonel Tomlinson, through the Banqueting-house to the Scaffold. A strong guard of several Regiments of Horse and Foot were planted on all sides, which hindered the near approach of the people, and the King from being heard, and therefore he chiefly directed his Speech to the bishop and colonel Tomlinson, as follows:

‘I shall be very little heard of any body else; I shall therefore speak a word to you here: Indeed, I could hold my peace very well, if I did not think that holding my peace would make some men think that I did submit to the Guilt, as well as the punishment: but I think it is my duty to God and my country to clear myself, both as an honest man, a good King, and a good Christian. I shall begin first with my Innocency; in troth, I think it not very needful to insist long upon this; for all the world knows that I did never begin a War with the two Houses of Parliament; and I call God to witness, to whom I must shortly make an account, that I did never intend to encroach upon their privileges; they began upon me. It is the Militia they began upon; they confessed the Militia was mine, but they thought fit to have it from me: and, to be short, if any body will look to the Dates of Commissions, of their Commissions and mine, and likewise to the Declarations, he will see clearly that they began these Troubles, not I. So that as for the Guilt of these enormous crimes that are laid against me, I hope in God that God will clear me of. I will not, I am in charity, and God forbid I should lay it upon the two Houses of Parliament; there is

made upon the scaffold at Whitehall-Gate immediately before his execution, on Tuesday the 30th of Jan. 1649. With a Relation of the manner of his going to execution. Published by special Authority, 1649,” (and which seems to have been written very soon after the event, for in the end of the pamphlet, it is said, “The King’s body now lies in his lodging chamber in Whitehall,”) it is noticed, that “the King desired to have the use (for his reception, as it seems, at Whitehall, preparatory to his execution) of the cabinet and the little room next it, where there was a trap-door.”

no necessity of either: I hope they are free of this guilt; for I believe, that ill instruments between them and me have been the cause of all this bloodshed; so that as I find myself clear of this, I hope, and pray God that they may too: yet, for all this, God forbid I should be so ill a Christian, as not to say God’s Judgments are just upon me; Many times he doth pay justice by an unjust Sentence, that is ordinary. I will only say this, that an unjust Sentence that I suffered to take effect, is punished now by an unjust Sentence upon me: So far I have said to shew you that I am an innocent man.

‘Now, to shew you that I am a good Christian, I hope there is a good man’ [pointing to bishop Juxon] ‘that will bear me witness, that I have forgiven all the world, and even those in particular that have been the chief causes of my death; who they are, God knows; I do not desire to know: I pray God forgive them. But this is not all, my charity must go further; I wish that they may repent. For, indeed, they have committed a great sin in that particular. I pray God, with St. Stephen, that it be not laid to their Charge; nay, not only so, but that they may take the right way to the peace of the kingdom; for my charity commands me not only to forgive particular men, but to endeavour, to the last gasp, the peace of the kingdom. So, Sirs, I do wish, with all my soul (I hope there are some here that will carry it farther), and endeavour the Peace of the kingdom. Now, Sirs, I must shew you both how you are out of the way, and will put you in the way. First, you are out of the way; for certainly all the ways you ever had yet, as I could find by any thing, is in the way of Conquest; certainly this is an ill way; for Conquest, Sirs, in my opinion, is never just, except there be a good and just cause, either for Matter of Wrong, or a just Title; and then if you go beyond the first quarrel, that makes that unjust at the end that was just at first; if there be only Matter of Conquest, then it is a great robbery, as a pirate said to Alexander, that he was a great robber, he was but a petty robber. And so, Sirs, I think the way you are in is much out of the way. Now, Sirs, to put you in the way, believe it, you shall never go right, nor God will never prosper you, until you give God his due, the King his due (that is, my successor), and the People their due: I am as much for them as any of you. You must give God his due, by regulating rightly his Church, according to the Scripture, which is now out of Order; to set you in a way particularly now, I cannot; but only this, a national Synod freely called, freely debated among themselves, must settle this when every opinion is freely heard. For the King’ [Then turning to a gentleman that touched the Ax, he said, ‘Hurt not the Ax, that may hurt me.’]—Indeed I will not—the Laws of the land will clearly instruct you for that;

'therefore because it concerns my own particular, I shall only give you a touch of it. For the People, truly I desire their Liberty and Freedom as much as any body whatsoever; but I must tell you, that their Liberty and Freedom consist in having government, those laws by which their lives and their goods may be most their own. It is not their having a share in the government—that is nothing appertaining to them: A subject and a sovereign are clean different things; and therefore until you do that, I mean, that you put the People in that Liberty, as I say, certainly they will never enjoy themselves.

'Sirs, it was for this that now I am come here. If I would have given way to an Arbitrary Way, to have all Laws changed according to the power of the sword, I needed not to have come here; and therefore I tell you (and I pray God it be not laid to your charge), that I am the Martyr of the People. In troth, Sirs, I shall not hold you much longer: I will only say this to you, That I could have desired a little time longer, because I would have a little better digested this I have said, and therefore I hope you will excuse me; I have delivered my conscience, I pray God you take those courses that are the best for the good of the kingdom and your own salvation.'

*Bishop.* Though your majesty's affections may be very well known as to Religion; yet it may be expected that you should say something thereof for the world's satisfaction.

*King.* 'I thank you heartily, my Lord, for that I had almost forgotten it. In troth, Sirs, my conscience in Religion, I think, is very well known to all the world; and therefore I declare before you all, that I die a Christian, according to the profession of the Church of England, as I found it left me by my father; and this honest man I think will witness it.'

Then turning to the officers, he said, 'Sirs, excuse me for this same: I have a good cause, and I have a gracious God, I will say no more.'

Then to colonel Hacker, he said, 'Take care that they do not put me to pain: And Sir, this and it please you'—

But a gentleman coming near the Ax, the King said, 'Take heed of the Ax, pray take heed of the Ax.'

Then speaking unto the Executioner, he said, 'I shall say but very short prayers, and when I thrust out my hands'—

Then he called to the Bishop, for his night-cap, and having put it on, he said to the Executioner, 'Does my hair trouble you?' who desired him to put it all under his cap, which the King did accordingly, by the help of the Executioner and the Bishop. Then turning to Dr. Juxon, he said, 'I have a good Cause, and a gracious God on my side.'

*Bishop.* There is but one stage more, this stage is turbulent and troublesome, it is a short one; but you may consider it will soon carry

you a very great way, it will carry you from earth to heaven; and there you will find a great deal of cordial joy and comfort.

*King.* 'I go from a corruptible to an incorruptible crown, where no disturbance can be, no disturbance in the world.'

*Bishop.* You are exchanged from a temporary to an eternal crown, a good exchange.

Then the King said to the Executioner, 'Is my hair well?' and took off his cloke and his George, giving his George to the Bishop,

• Hume says, "It being remarked, that the King, the moment before he stretched out his neck to the Executioner, had said to Juxon, with a very earnest accent, the single word 'Remember;' great mysteries were supposed to be concealed under that expression; and the generals vehemently insisted with the prelate, that he should inform them of the king's meaning. Juxon told them, that the king, having frequently charged him to inculcate on his son the forgiveness of his murderers, had taken this opportunity, in the last moment of his life, when his commands, he supposed, would be regarded as sacred and inviolable, to reiterate that desire; and that his mild spirit thus terminated its present course, by an act of benevolence towards his greatest enemies." But he does not cite any authority. In the "*Regii sanguinis Clamor ad Cælum contra Parricidas Anglicanos*;" of the younger Peter Du Moulin (a work not destitute of just thoughts or eloquent passages, though the Latinity of it is not in all parts unexceptionable, and some of the sentiments are by no means over charitable,) is the following passage, 'At detrusus in carcerem episcopus Londinensis non simplici de causâ asservabatur. Auditus fuerat Rex in fatali pegmate Episcopo ingemians, Memento, Memento. Expnimendum igitur erat à magno viro, quid id rei esset, quod tantâ cum curâ Rex, morti proximus, juberet eum meminisse. Productus Episcopus coram Regis iudicibus, jussusque non sine gravissimis minis illud edere, diù conticuit adjuratus tandem meram et totam veritatem eloqui, "Jusserat me," inquit, "Rex Dominus meus ut si possem ad Principem filium et heredem suum pervenire, hoc supremum morientis patris mandatum ad eum preferrem, ut Regno et Potestati suæ restitutus, vobis suæ necis authoribus ignosceret: Hoc vero me meminisse Rex iterum atque iterum jussit. O! Regem etiam interfectaribus suis venerandum! O! pium Populi sui Parentem! O! genuinem Christi Discipulum, qui etiam post mortem pro inimicis suis deprecatur!" Whether Hume believed this Anecdote to be genuine may possibly admit of doubt. He relates it indeed, as we have seen, upon an occasion on which it tends to raise the character of Charles the First: but in his account of the treatment of the Regicides, where this anecdote might operate to the disadvantage of Charles the Second's character, not only he mentions it not, but he makes not the

saying, 'Remember.' Then he put off his doublet, and being in his waistcoat, he put on his cloke again; then looking upon the block, he said to the Executioner, 'You must set it fast.'

*Executioner.* It is fast, sir.

*King.* 'When I put out my hands this way,' (stretching them out) 'then'——After that, having said two or three words to himself, as he stood with his hands and eyes lift up, immediately stooping down, he laid his neck upon the block \*. And then the Executioner again putting his hair under his cap, the King thinking he had been going to strike said, 'Stay for the sign.'

*Executioner.* Yes, I will, an't please your majesty.—After a little pause, the King stretching forth his hands, the Executioner at one blow severed his head from his body, and held it up and shewed it to the people, saying, 'Behold the head of a Traitor!'. At the instant

slightest allusion to it. In "King Charles his Speech," &c. published 1649, it is said to be then supposed that the word 'Remember,' referred to the giving the King's George to his son. Rushworth's words are, "Then the King took off his cloke and his George, giving his George to Dr. Juxon, saying, 'Remember,' (it is thought for the Prince)." Oldmixon, who however cites no authority, says, (vol. 2, p. 369.) "The Council of State after the King was beheaded, was willing to know the meaning of his last expression 'Remember,' and called Dr. Juxon before them to give an account of it, who told them, "That the King immediately before his coming out to the place of execution, had charged him to carry to the Prince his George, with these his two last commands, 'That he should forgive his murderers, and 'that if ever he came to the crown, he should 'so govern his subjects as not to force them 'upon extremities.'" Neither Clarendon nor Whitelocke attempt to explain the word 'Remember.' It should be noticed, that by a Letter dated Nov. 29, 1648, king Charles, in strong though general expressions, exhorts his son (afterwards Charles the Second) to placability, and dissuades him from revenge. See the Works of King Charles the First, fol. p. 351.

\* Kennett says, "It must be dreadfully remembered, that the then cruel powers did suspect, that the king would not submit his head to the block; and therefore to bring him down by violence to it, they had prepared hooks and staples (made by a smith in Aldgate) to hawl him as a victim to the slaughter. But by the example of his Saviour, he resisted not, he disappointed their wit, and yielded to their malice." See too the Trial of Hulet, A. D. 1660, *infra*.

† Kennett (Compl. Hist. 2d ed. vol. 3, p. 187, note a) says, "It was never yet proved or discovered, who was the bold Executioner of the King: that which most led to the knowledge of him, was a story I heard related by archbishop Tenison, who when vicar of St.

when the blow was given, there was a dismal Universal Groan among the people; and as soon as the Execution was over, one troop of horse marched immediately from Charing-Cross to King-street, and another from King-street to Charing-Cross, on purpose to disperse and scatter the people. The corpse was put into a coffin, and the Bishop and Mr. Herbert went with it to the Back-stairs to have it embalmed; after embalming, his head was sewed on, and the corpse was wrapt in lead, and the coffin covered with a velvet pull, and then removed to St. James's. Mr. Herbert then made application to such as were in power, that it might be interred in Henry 7's chapel; but it was denied, for that his burying there would attract infinite numbers of all sorts thither; which, as the times then were, was judged unsafe and inconvenient. Mr. Herbert acquainting the Bishop with this, they then resolved to bury the King's body in the royal chapel of St. George, within the Castle of Windsor, both in regard that his majesty was sovereign of the most noble Order of the Garter, and that several kings had been there interred; namely, king Henry 6, Edward 4, and Henry 8, upon which consideration, the Committee of Parliament was addressed to the second time, who, after some deliberation, gave Orders, bearing date Feb. 6, 1649, authorizing Mr. Herbert and Mr. Anthony Mildmay to bury the King's body there. Accordingly the corpse was carried thither from St. James's, Feb. 7, in a hearse covered with black velvet, drawn by six horses covered with black cloth, and attended by about a dozen gentlemen\*.

Martins, had a young woman come to him to visit her dying father in a yard or lane in King's-street Westminster, and importuning him much to go with her; she said her father lay under the horror of having cut off the King's head. When he came the person was dead, and no Confession was left in writing, nor any other account to be got but that the person had been a sort of a butcher or cattle drover, at St. Ives in Huntingdonshire, was sent for up by Oliver Cromwell about the end of 1648, had ever since lived obscurely by a feigned name, and received a yearly pension, which died with him. The Archbishop sent me to enquire at the Griffin or Green Dragon Tavern in Fleet-street, about the said surviving daughter, but the people of the house being changed, I could learn nothing." It has been said that col. Joyce was the King's Executioner. Whitelocke (Mem. 370) says, "Two men in disguises and vizors stood upon the scaffold for Executioners." See different relations concerning this matter in the Trials of Axtell, and Hacker, and Hulet, A. D. 1660, *post*, and some farther particulars in the Gentleman's Magazine for Nov. 1767 (vol. 37, p. 548, 549.) Jan. 1768 (vol. 38, p. 90.) and for 1784 (vol. 54, p. 409).

\* Rushworth says, "His body was put in a coffin, covered with black velvet, and removed

The King's Statue was afterwards taken down from the Royal Exchange in London, where it was set up again by the city in the

to his lodging chamber in Whitehall. Being embalmed and laid in a coffin of lead to be seen for some days, at length upon Wednesday the 7th of February, it was delivered to four of his servants, Herbert, Mildmay, Preston, and Joyner, who with some others in mourning equipage attended the hearse that night to Windsor, and placed it in the room which was formerly the King's bed-chamber. Next day it was removed into the Deans-hall, which was hung with black, and made dark, and lights were set burning round the hearse. About three in the afternoon the duke of Richmond, the marquis of Hartford, the earls of Southampton and Lindsey, and the bishop of London, came thither, with two Votes passed that morning, whereby the ordering of the King's Burial was committed to the Duke, provided that the Expenses thereof exceeded not 500l. This Order they shewed to col. Whichcot the Governor of the Castle, desiring the interment might be in St. George's Chapel, and according to the form of the Common Prayer: The latter request the Governor denied, saying, That it was improbable the Parliament would permit the use of what they had so solemnly abolished, and therein destroy their own Act. The lords replied, That there was a difference betwixt destroying their own Act, and dispensing with it; and that no power so binds its own hands, as to disable itself in some cases. But all prevailed not." See, too, 3 Cobb. Parl. Hist. p. 1232, 1283. The House of Commons ordered the common post to be stopped till Letters were prepared to be sent to the several Sheriffs in England and Wales, to publish and proclaim, in their different counties and districts, the said Act, which was in these words: "Whereas Charles Stuart, king of England, being, for the notorious treasons, tyrannies, and murders committed by him in the late unnatural and cruel wars, condemned to death; whereupon, after execution of the same, several pretences may be made, and title set on foot, unto the Kingly Office, to the apparent hazard of the public peace; for prevention thereof, be it enacted and ordained by this present parliament, and by the authority of the same, That no persons whatsoever do presume to proclaim, declare, publish, or any way promote Charles Stuart, (son of the said Charles) commonly called the Prince of Wales, or any other person, to be king or chief magistrate of England or Ireland, or any the dominions belonging to them, or either of them, by colour of inheritance, succession, election, or any other claim whatsoever, without the free consent of the people in parliament first had, and signified by a particular act or ordinance for that purpose; any statute, law, usage, or custom, to the contrary hereof in any-wise notwithstanding.—And it is hereby further enacted and ordained, That whosoever shall, contrary to this act, proclaim,

year 1682, to curry favour with Charles 2, when their Charter was threatened\*.

The Character of this Prince has been represented more variously than that, perhaps, of any other person mentioned in English story. It were vain to refer the Reader to the numerous Historians of his reign, and biographers of himself. Hume is his professed panegyrist; yet he admits that, "The king had in some instances stretched his prerogative beyond its just bounds, and, aided by the Church, had well nigh put an end to all the liberties and privileges of the nation." Hist. c. 60, last paragraph. Hume also incidentally and I believe truly, ascribes to the King two qualities, which at the same time that they are an infallible indication of very great imbecility of character, can scarcely in a King fail to be very mischievous to himself and to his people. Speaking of Charles's averseness to make peace with Spain after the breach in 1626, between him and his second Parliament, Hume says, "There are two circumstances in Charles's character, seemingly incompatible, which attended him during the whole course of his reign, and were in part the cause of all his misfortunes: he was very steady, and even obstinate in his purpose; and he was easily governed, by reason of his facility, and of his deference to men much inferior to himself both in morals and understanding. His great ends he inflexibly maintained: but the means of attaining them, he readily received from his ministers and favourites; though not always fortunate in his choice."

Among the representations of this Prince which I have met with, one which appears to me to be most candid and judicious occurs—where perhaps but few would look for such a character of him—in a 30th of January Sermon before the House of Lords.

declare, publish, or any way promote the said Charles Stuart the son, or any other person, to be King or Chief Magistrate of England or Ireland, or any the dominions belonging to them, or either of them, without the said consent in parliament signified as aforesaid, he shall be deemed and adjudged a Traitor to the Commonwealth, and shall suffer pains of death, and such other punishments as belong to the crime of High Treason."

\* On the 9th of August, 1649, an Order was made in the House of Commons, for taking down and demolishing the Arms of the late king in all public places, and likewise all Statues of him, and Inscriptions. There is a story, that the Equestrian Statue of king Charles, now at Charing-Cross, was sold to one River, a brazier, who buried it in his garden, and offered for sale articles, which he represented to be composed of the materials of the statue; and that those articles were eagerly purchased by the royalists, as relics of a martyr, and by their adversaries, as tokens of their success.

"Thus fell the unhappy King in a popular storm; raised indeed by himself; but influenced by his enemies, even after he had corrected the disorder of those unruly elements which gave it birth, and were now ready, as he saw too late, to bear down all things in their course: The king had many virtues, but all of so unsociable a turn as to do him neither service nor credit. His religion, in which he was sincerely zealous, was over-run with scruples; and the simplicity if not the purity of his morals were debased by casuistry. His natural affections (a rare virtue in that high situation) were so excessive as to render him a slave to all his kin, and his social so moderate as only to enable him to lament, not to preserve, his friends and servants. His knowledge was extensive though not exact, and his courage clear though not keen: yet his modesty far surpassing his magnanimity, his knowledge only made him obnoxious to the doubts of his more ignorant ministers, and his courage to the irresolutions of his less adventurous generals. In a word, his princely qualities were neither great enough nor bad enough to succeed in that most difficult of all attempts, the enslaving a free and jealous people." The full conviction of this truth made Laud, (who was not so despicable a politician as we commonly suppose him) upon seeing his Co-adjutor, Strafford, led out to slaughter, lament his fate in these emphatic and indignant words; "He served a Prince who knew not how to be, nor to be made, great." Warburton's Works, vol. 5, p. 301, 311, 312, 4to edit. 1788. In the original edition of the Sermon preached by Warburton on January 30th, 1760, before the House of Lords, printed in that year agreeably to the Vote of the House, this character of King Charles was not inserted, and much of the Warburtonian raciness to be found in Hurd's edition was very discreetly diluted. Take a specimen or two: "What was policy in James" ['the Father' original edit.] became religion in the 'Martyr Charles' ['Son' original edit.] 'King-craft' ['State-craft' original edit.] is made of much more ductile 'stuff' ['matter' original edit.] than Church Bigotry." It may, perhaps, be excusable to observe, that very many of the Sermons, in Hurd's edition of Warburton's Works, can scarcely be believed to be exact representations of the discourses, which were pronounced. What Warburton speaks of, as Laud's exclamation, is to be found in the "History of the Troubles and Trial of Walter Laud, &c. p. 178. "The only imperfections which he [Strafford] had, that were known to me, were his want of bodily health, and a carelessness, or rather roughness, not to oblige any: and his missteps in this last action were that he groaned under the public envy of the nobles, and served a mild and a gracious prince, who knew not how to be, or to be made great." The fate of King Charles calls forth from his descendant, Mr. Fox, the following original reflections:

"The execution of the King, though a far less violent measure than that of lord Strafford,

is an event of so singular a nature, that we cannot wonder that it should have excited more sensation than any other in the annals of England. This exemplary act of substantial justice, as it has been called by some, of enormous wickedness, by others, must be considered in two points of view. First, was it not in itself just and necessary? Secondly, was the example of it likely to be salutary or pernicious? In regard to the first of these questions, Mr. Hume, not perhaps intentionally, makes the best justification of it, by saying, that while Charles lived, the projected republic could never be secure. But to justify taking away the life of an individual, upon the principle of self-defence, the danger must be not problematical and remote, but evident and immediate. The danger in this instance was not of such a nature; and the imprisonment, or even banishment, of Charles, might have given to the republic such a degree of security as any government ought to be content with. It must be confessed however on the other side, that if the republican government had suffered the King to escape, it would have been an act of justice and generosity wholly unexampled; and to have granted him even his life, would have been one among the more rare efforts of virtue. The short interval between the deposition and death of princes is become proverbial; and though there may be some few examples on the other side, as far as life is concerned, I doubt whether a single instance can be found, where liberty has been granted to a deposed monarch. Among the modes of destroying persons in such a situation, there can be little doubt but that adopted by Cromwell and his adherents is the least dishonourable. Edward 2, Richard 2, Henry 6, Edward 5, had none of them long survived their deposition; but this was the first instance, in our history at least, where, of such an act, it could be truly said, that it was not done in a corner.

"As to the second question, whether the advantage to be derived from the example was such as to justify an act of such violence, it appears to me to be a complete solution of it to observe, that with respect to England, (and I know not upon what ground we are to set examples for other nations, or in other words, to take the criminal justice of the world into our hands,) it was wholly needless, and therefore unjustifiable, to set one for kings, at a time when it was intended the office of king should be abolished, and consequently, that no person should be in the situation to make it the rule of his conduct. Besides, the miseries attendant upon a deposed monarch, seem to be sufficient to deter any prince, who thinks of consequences, from running the risk of being placed in such a situation; or, if death be the only evil that can deter him, the fate of former tyrants deposed by their subjects, would by no means encourage him to hope he could avoid even that catastrophe. As far as we can judge from the event, the example was certainly not very effectual, since both the sons of Charles,

though having their father's fate before their eyes, yet feared not to violate the liberties of the people even more than he had attempted to do.

"If we consider this question of example in a more extended view, and look to the general effect produced upon the minds of men, it cannot be doubted but the opportunity thus given to Charles, to display his firmness and piety, has created more respect for his memory than it could otherwise have obtained. Respect and pity for the sufferer on one hand, and hatred to his enemies on the other, soon produce favour and aversion to their respective causes; and thus, even though it should be admitted, (which is doubtful,) that some advantage may have been gained to the cause of liberty, by the terror of the example operating upon the minds of princes, such advantage is far outweighed by the zeal which admiration for virtue, and pity for sufferings, the best passions of the human heart, have excited in favour of the royal cause. It has been thought dangerous to the morals of mankind, even in fiction and romance, to make us sympathize with characters whose general conduct is blameable; but how much greater must the effect be, when in real history our feelings are interested in favour of a monarch with whom, to say the least, his subjects were obliged to contend in arms for their liberty? After all, however, notwithstanding what the more reasonable part of mankind may think upon this question, it is much to be doubted whether this singular proceeding has not, as much as any other circumstance, served to raise the character of the English nation in the opinion of Europe in general. He who has read, and still more he who has heard in conversation, discussions upon this subject by foreigners, must have perceived, that, even in the minds of those who condemn the act, the impression made by it has been far more that of respect and admiration, than that of disgust and horror. The truth is, that the guilt of the action, that is to say, the taking away of the life of the king, is what most men in the place of Cromwell and his associates would have incurred; what there is of splendor and of magnanimity in it, I mean the publicity and solemnity of the act, is what few would be capable of displaying. It is a degrading fact to human nature, that even the sending away of the Duke of Gloucester was an instance of generosity almost unexampled in the history of transactions of this nature."

Let us now turn to the fine spun distinctions, the delicately poised doubts, and the nicely antagonised conclusions of Mr. Hume:

"The tragical death of Charles begat a question. Whether the people, in any case, were entitled to judge and to punish their sovereign? and most men, regarding chiefly the atrocious usurpation of the pretended judges, and the merit of the virtuous prince who suffered, were inclined to condemn the republican principle as highly seditious and extravagant: But

there still were a few who, abstracting from the particular circumstances of this case, were able to consider the question in general, and were inclined to moderate, not contradict, the prevailing sentiment. Such might have been their reasoning. If ever, on any occasion, it were laudable to conceal truth from the populace, it must be confessed that the doctrine of resistance affords such an example; and that all speculative reasoners ought to observe, with regard to this principle, the same cautious silence, which the laws in every species of government have ever prescribed to themselves. Government is instituted in order to restrain the fury and injustice of the people; and being always founded on opinion, not on force, it is dangerous to weaken, by these speculations, the reverence which the multitude owe to authority, and to instruct them beforehand, that the case can ever happen, when they may be freed from their duty of allegiance. Or should it be found impossible to restrain the license of human disquisitions, it must be acknowledged, that the doctrine of obedience ought alone to be inculcated, and that the exceptions, which are rare, ought seldom or never to be mentioned in popular reasonings and discourses. Nor is there any danger, that mankind, by this prudent reserve, should universally degenerate into a state of abject servitude. When the exception really occurs, even though it be not previously expected and descanted on, it must, from its very nature, be so obvious and undisputed, as to remove all doubt, and overpower the restraint, however great, imposed by teaching the general doctrine of obedience. But between resisting a prince and dethroning him, there is a wide interval; and the abuses of power, which can warrant the latter violence, are greater and more enormous than those which will justify the former. History, however, supplies us with examples even of this kind; and the reality of the supposition, though, for the future, it ought ever to be little looked for, must, by all candid enquirers, be acknowledged in the past. But between dethroning a prince, and punishing him, there is another very wide interval; and it were not strange, if even men of the most enlarged thought should question, Whether human nature could ever in any monarch reach that height of depravity, as to warrant, in revolted subjects, this last act of extraordinary jurisdiction. That illusion, if it be an illusion, which teaches us to pay a sacred regard to the persons of princes, is so salutary, that to dissipate it by the formal trial and punishment of a sovereign, will have more pernicious effects upon the people, than the example of justice can be supposed to have a beneficial influence upon princes, by checking their career of tyranny. It is dangerous also, by these examples, to reduce princes to despair, or bring matters to such extremities against persons endowed with great power, as to leave them no resource, but in the most violent and most sanguinary course. This general position

being established, it must however be observed, that no reader, almost of any party or principle, was ever shocked, when he read, in ancient history, that the Roman senate voted Nero, their absolute sovereign, to be a public enemy, and, even without trial, condemned him to the severest and most ignominious punishment; a punishment from which the meanest Roman citizen was, by the laws, exempted. The crimes of that bloody tyrant are so enormous, that they break through all rules, and extort a confession that such a de-throned prince is no longer superior to his people, and can no longer plead, in his own defence, laws, which were established for conducting the ordinary course of administration. But when we pass from the case of Nero to that of Charles, the great disproportion, or rather total contrariety, of character immediately strikes us; and we stand astonished, that, among a civilized people, so much virtue could ever meet with so fatal a catastrophe. History, the great mistress of wisdom, furnishes examples of all kinds; and every prudential, as well as moral precept, may be authorised by those events, which her enlarged mirror is able to present to us. From the memorable revolutions which passed in England during this period, we may naturally deduce the same useful lesson, which Charles himself, in his later years, inferred; that it is dangerous for princes, even from the appearance of necessity, to assume more authority than the laws have allowed them. But it must be confessed, that these events furnish us with another instruction, no less natural, and no less useful, concerning the madness of the people, the furies of fanaticism, and the danger of mercenary armies."

Hume says of Charles that, "his virtues predominated extremely above his vices, or more properly speaking, his imperfections, for scarce any of his faults rose to that pitch as to merit [this is Hume's phrase] the appellation of vices, his dignity was far from pride, his humanity from weakness, his bravery from rashness, his temperance from austerity, his frugality from avarice." He is also bold enough to affirm, that, "though some historians have rashly questioned the good faith of this prince, for this reproach the most malignant scrutiny of his conduct, which in every circumstance, is now thoroughly known, affords not any reasonable foundation. On the contrary, if we consider the extreme difficulties, to which he was so frequently reduced, and compare the sincerity of his professions and declarations; we shall avow, that probity and honour ought justly to be numbered among his most shining qualities. In every treaty, those concessions which he thought he could not in conscience maintain, he never could, by any motive or persuasion, be induced to make." See, too, in vindication of Charles's sincerity, the Notes C. and F. to the 7th volume of Hume's History; upon which, however, two observations may be made in addition to those of Mr. Laing, in the

passages inserted below. First, It is not perfectly ingenuous in Mr. Hume to say of Roger Coke simply that "he wrote so late as king William's reign," suppressing how much earlier he had lived, and what intimacy he had had before the Restoration with leading people: Secondly, It is strange in Mr. Hume to say that, "the imputation of insincerity on Charles, seems to be of a later growth than his own age," since that vice is imputed to him by the *Essex*, as well as by Ludlow; and by the uniform tenor of parliamentary proceedings, respecting the Petition of Right, and indeed during almost the whole of his reign.

Lilly says that King Charles the First "had much of self-ends in all he did, and a most difficult thing it was to hold him close to his own promise; so that some foreign princes bestowed on him the character of a most false prince, and one that never kept his word unless for his own advantage." See 2 Oldmixon's Hist. 350.

"In the second parliament," says that able and intelligent Historian May, in his Breviary of the History of England, ed. 1680, p. 6. "King Charles granted and signed the Petition of Right, but suddenly breaking up that parliament he acted the same things in violation of laws which he had done before: so that it was manifest, that the people's liberties by grant of that Petition were not fortified, but utterly overthrown, and it appeared neither laws themselves could give protection, nor the King's faith security to the people." After noticing the Battle of Naseby and the interception of Letters made there, he proceeds, "From the reading of these Letters many discourses of the people arose: for there appeared his [the King's] transactions with the Irish rebels, and with the Queen for assistance from France, and the duke of Lorraine, of which before is spoken. Many good men were sorry that the King's actions agreed no better with his words, that he openly protested before God with horrid imprecations, that he endeavoured nothing so much as the preservation of the Protestant Religion, and rooting out of Popery, yet in the mean time under-hand, he promised to the Irish Rebels an abrogation of those laws against them, which was contrary to his late expressed promises, in these words, 'I will never abrogate the laws against the Papists:' and again, 'I abhor to think of bringing foreign soldiers into the kingdom:' and yet he solicited the duke of Lorraine, the French, the Danes, and the very Irish for assistance: they were vexed, also, that the King was so much ruled by the will of his wife as to do every thing by her prescript; that Peace, War, Religion and Parliament should be at her disposal. It appeared, besides, out of those Letters, with what mind the King treated with the Parliament at Uxbridge, and what could be hoped by that Treaty, when, writing to the Queen, he affirms, that if he could have had but two more consenting to his vote, he would not have given the name of Parliament to them at Westminster: at last he agreed to it in this sense, That

it was not all one to call them a Parliament and to acknowledge them so to be, and upon that reason, which might have displeased his own side, he calls those with him at Oxford 'a Mungrel Parliament.' See, too, the constitutional representation of the conduct and of the character of King Charles the First, which Mr. Hatsell has given in the 4th volume of his 'Precedents,' and the very judicious reflections which he has subjoined.

In short, as Mr. Laing observes; "Sincerity was certainly no part of his character. It is not sufficient to affirm that the difficulties of his situation, his own imprudence, or even the utmost malignity of fortune, occasioned the great and almost unexampled calamities of his reign. We must add that the early and repeated instances of his insincerity, which we have occasionally described, had created such a firm belief of his dissimulation, that the popular leaders, from a well-founded distrust of his ambiguous declarations, were ever afraid to treat with him, unless upon their own terms, to which he was unwilling or unable to accede. The evidence resulting from his confidential letters, where the proofs of a disingenuous mind can alone be found, is industriously suppressed by those partial historians, who asserting the unblemished integrity of his character, take no note of the principal cause of his misfortunes and death. A subtle and professed casuist, he was enabled to reconcile the most disingenuous protestations to his own conscience; and, without an absolute breach of veracity, he studied by verbal evasions to deceive his enemies, and by mental equivocation to deceive himself."

In the letter to the Queen he says, That "upon the Treaty at Uxbridge, he did not positively own the Parliament, it being otherwise to be construed, though they were so simple as not to find it out; and that it was recorded in the Notes of the King's Council that he did not acknowledge them a Parliament." Whitelocke's Memorials, 24th June, 1645, p. 147.

Horace Walpole, lord Orford, after relating that, "Charles the First translated Bishop Saunderson's Lectures 'De Juramenti promissorii obligatione,' which he desired Bishop Juxon, Dr. Hammond, and Herbert, to compare with the original," (This Translation was printed in 8vo. at London, 1655.) shrewdly observes, "A man, who studies cases of Conscience so intimately, is probably an honest man, but at least he studies them in hopes of finding, that he need not be so very honest as he thought. Oliver Cromwell, who was not quite so scrupulous, knew that casuistry is never wanted for the observance of an oath: it may to the breach of it. Had he trusted the King, his majesty would probably not have contented himself with Dr. Saunderson, but would have consulted some casuist, who teaches that faith is not to be kept with rebels." Lord Orford's Works, 4to. vol. 1, p. 276.

The evidence in favour of the authenticity of the anecdote respecting an intercepted Letter

from Charles to his Queen, is thus stated by Mr. Laing:

"Hume rejects the story of the Intercepted Letter, as a rumour totally unworthy of credit, as it was first mentioned by Roger Coke, a passionate historian, who wrote so late as King William's reign; yet he proceeds to transcribe from Carte, lord Broghill's Narrative of the Intercepted Letter, as more worthy of attention. But it is observable, 1. That Coke was a member of the Rota Club in 1657, and that the report is mentioned by other contemporaries, Dugdale, p. 378, and Herbert, 61, who endeavour in vain to disprove it by arguments drawn from the sincerity of Charles, or from the improbability of his not having a secure mode of correspondence with the queen. 2. The Narrative of lord Broghill, (earl of Orrery) preserved by Maurice his chaplain, is distinct and explicit. Cromwell, riding out with Ireton and Broghill, after the latter had relieved them at Clonmell, observed repeatedly, in a familiar conversation, that they had once a mind to have closed with the king, and had he consulted his own judgment, or had his servants been true, he would have fooled them all. Finding them in a communicative humour, Broghill asked an explanation, to which Cromwell freely answered, that observing the Scots and the Presbyterians likely to agree with the king, they resolved to prevent them by obtaining reasonable conditions for themselves. While deliberating on the subject, they were informed by one of their spies of the bed-chamber, that their doom was fixed that day: and that it was communicated in a Letter to the Queen, which was sewed up in the skirt of a saddle, to be sent by a messenger ignorant of the charge, to an inn in Holborn, and conveyed to Dover. 'Ireton and I resolved immediately to take horse from Windsor, and watching at the inn in the disguise of troopers, we discovered the messenger, took away the saddle to examine it, and on unripping one of the skirts got possession of the letter. His majesty acquainted the Queen that he was courted by both factions, the Scotch Presbyterians, and the Army; that which of them bid fairest for him should have him; but that he thought he should close with the Scots. Upon this,' continued Cromwell, 'we speeded to Windsor; and finding we were not likely to have any tolerable terms with the King, we resolved to ruin him.' Orrery's Life prefixed to his Letters, Lond. 1742. 3. The same fact is evidently mentioned by Coke, a contemporary, and with the same circumstances by Sirype in his Notes on Kennet's Comp. Hist. (iii. 170, edit. 1719,) with this difference in the contents of the Letter, as preserved by Coke, that in assenting to Cromwell's proposals, it would be easier to take him off afterwards, than now at the head of his army. 4. The Letter itself appears to have existed at a later period. Wagstaff mentions and disputes an avowment of Millington's, that the Letter was then in his possession; but the fact is the more probable from the authenticity of lord Anglesea's Memoranda

dom on the *Icon*, which was also in his possession; the existence of which, Wagstaff, like a true zealot, has also disputed. Strype informs us that Dr. Lane of the Commons had seen, as he frequently declared, the original Letter in the King's hand-writing. Harley, lord Oxford, frequently informed Bolingbroke that he had seen and examined the Letter, which was written in answer to one from the Queen, that had been intercepted and again forwarded to Charles: blaming him for too great concessions to those villains, Cromwell and Ireton. He replied, 'that he should leave him to manage, who was better informed of all circumstances than she could be; that she might be entirely easy as to whatever concessions he should make them, for that he should know in due time how to deal with the rogues, who, instead of a silken garter, should be fitted in due time with a heavier cord.' 'Thus,' said Harley, 'the Letter ended, which they waited for, and intercepting accordingly, it determined his fate.' (Richardsoniana, p. 132.) Here the contents of the Letter correspond with Coke; and the circumstance of the first Letter from the Queen being intercepted coincides with the statements of Dugdale and Herbert, who knew or have communicated no more of the report. Cromwell might employ his spy to procure intelligence of the last letter, in consequence of having intercepted the first. The contents of that letter, in which his doom was fixed, though softened by Orrery or his chaplain, must have communicated something more energetic than an inclination rather to join with the Scots; namely, the design preserved by Coke, and recollected distinctly by Harley at the conclusion of the letter, to raise and afterwards to ruin Cromwell. A singular traditional Anecdote is, certainly a slight foundation for an historical fact. But the concurrent reports of contemporaries, confirmed by Orrery upon the authority of Cromwell, when combined with the existence of such a letter at a subsequent period, must render the fact indisputable, that a letter from Charles, which revealed the insincerity of his intrigues with the army, was intercepted by Cromwell, and determined his fate."

In addition to which it may be worth while to give the first paragraph of the Note to 3 Kenn. Compl. Hist. 170, 2nd edit. "There has been a constant tradition, that at Hampton-court a secret Contract was made between the King and Cromwell, that the Army should restore his majesty, and that Cromwell, for his part in it, should have 10,000*l.* per ann., be Earl of Essex, and have a Garter: and that this bargain had certainly taken effect, had not the King made an Apology for it in a Letter to the Queen, and sufficiently implied, that he did it by constraint, and when at liberty and in power, he should think himself discharged of the conditions put upon him!"—In fact, the whole 3rd vol. of Laing's History abounds with proofs of the habitual insincerity of Charles. See also 2 Clarendon State Papers, 337 (cit. VOL. IV.

3 Laing, note xi.) "I could wish the King should sadly apply himself to the part he has to act, that is, to suffer resolutely, and have no tricks."

A few days after the King's Execution, was published *Early Bampton*. The impression which this book produced, and which Milton employed his pen to efface, seems to have been prodigious. We are told that it passed through fifty editions in a twelvemonth, and that many have not scrupled to ascribe to it the subsequent Restoration of the Royal Family. Mr. Laing thinks that if it had appeared a week sooner it might have preserved the King. The long disputed question of the authenticity of this work is at length set at rest. Mr. Laing has proved beyond a doubt, that it was written by Gauden (who upon the Restoration was made Bishop of Exeter, and shortly afterwards of Worcester) notwithstanding Hume's assertion, "That no human testimony seems sufficient to convince us that he was the author." Mr. Laing's review of the evidence respecting this matter (Hist. vol. 3, note xiv.) is very masterly. Hume relies on the internal testimony. The collation of what is said by him and Laing on that subject is interesting, and shews how hazardous it is to rely on conclusions derived, though by the most sagacious minds, from comparison of style alone. Upon this occasion, indeed, Hume's angacity would be thwarted by his partiality and prejudice. See also Dr. Symmons's Observations on the same subject in his Life of Milton, and the Appendix to Nash's History of Worcestershire.

Du Moulin in his "*Regii Clamor Sanguinis*," Echard in his History, and Sanderson, give accounts of some preternatural events by which the ultimate sufferings of Charles were consecrated. Hume does not condescend to repeat Sanderson's story of the blind woman at Deptford, who was immediately restored to sight by the application of a relic. He is, however, unwilling to suffer the memory of any forged miracles to perish, and thus ambiguously expresses himself: "On weaker minds the effect of complicated passions was prodigious. Women are said to have cast forth the untimely fruit of their womb. Others fell into convulsions, or sunk into such a melancholy as attended them to their grave. Nay, some unmindful of themselves, as though they could not, or would not survive their beloved prince, it is reported, suddenly fell down dead."

Lord Clarendon gives an account of the examination and disposal of the King's body, and of the interment of it at Windsor. He mentions that after the Restoration, Charles the Second intended that it should be solemnly deposited with the royal ancestors in King Henry the Seventh's chapel, for which purpose a search was made for it, but unsuccessfully. A man of Charles the Second's character is not likely to have felt much anxiety about the matter.\*

\* In a Note to the Proceedings against the Regicides, A. D. 1660, *post*, is related a curious story concerning the subsequent fate of the king's body.

183. The Trial of JAMES Duke of HAMILTON, and Earl of CAMBRIDGE, before the High Court of Justice, for High Treason: 1 CHARLES II. A. D. 1649.\*

MR. Steel and Mr. Cook, the Counsel for the People of England, did exhibit on the 9th of February, 1649, being Friday, the following Charge:

‘ That the earl of Cambridge, about the 19th of July last, traitorously invaded this nation in a hostile manner, and levied War to assist the King against the Kingdom and People of England, and had committed sundry Murders, Outrages, Rapines, Wastes, and Spoils, upon the said People; and particularly about the 20th of August, near Preston, did make War, join Battle, and fight against the forces of the parliament, and therein did murder and kill col. Thornley and others.’

To this the Duke put in the Declinatour and special Plea following, intending at last to answer the Charge, if the Plea was not sufficient:† having first told the Court, he was better known by another name than the Earl of Cambridge. His Plea consisted of three Heads: First, He pleaded this his undertaking that employment was by command of the Parliament, and Supreme Authority of the kingdom of Scotland, for such ends as he conceived were good and justifiable, and in no way derogatory to the peace and happiness of these dominions: That he did earnestly endeavour to decline it, but that not being accepted of, he could not disobey their commands without incurring the severest censures. Secondly, That he was born in Scotland before the naturalization of his father in England; therefore he conceived himself an Alien, and not triable in England. Thirdly, That he had rendered himself prisoner upon capitulation and articles with those who had major-general Lambert’s commission; and that by these he was first a prisoner of war; next, his life and the safety of his person was secured to him by the Articles, which were signed by the Commissioners of both sides, before he was their Prisoner, and that they could fasten neither a Breach nor non-performance on him. Upon this the Counsel of the People caused the Act of his father’s naturalization to be read, and spake a little, to aggravate and set out his fact: but he desired a convenient time to procure Papers, Witnesses, and other Evidences material to his Plea, which he said was seldom denied to any in that condition; and it was well known to many there, how that since

the beginning of this Parliament, many weeks were granted to an eminent man upon his trial (by whom he meant the earl of Strafford, who had time allowed him to send to Ireland). The Court adjourned to the next day, without giving him any satisfactory Answer. But the Duke’s Carriage and Discourse that day gained much on all the spectators, being so serene and calm, that his very enemies did applaud it.

Saturday the 10th, in the evening, his Grace was again brought to the Bar, and he desired Counsel, which was granted; and it was referred to him, whether the Court or himself should name them: which he then passed over, and without much speaking on either side, the Court adjourned; notice being given him, that he must appear again on Tuesday the 13th. But no Order being issued forth for Counsel, some counsel who were dealt with did decline the employment.

Tuesday the 13th, his Grace being brought again to the Bar, desired a longer time, since, notwithstanding serious means had been used, no lawyer would be his counsel, without the Court’s Orders. This was granted by the President (serjeant Bradshaw) after some expostulation, and, upon his Grace’s nomination, Mr. Chute, Mr. Hales, Mr. Parsons, and Dr. Walker, were assigned him for Counsel, to have free access to him, in the presence and hearing of some of his keepers, and to be ready against Thursday following to maintain his Plea: upon which the Court adjourned till the 15th.

Thursday the 15th, his Grace being again brought before the Court, declared that their Order being offered to his Counsel, they all found themselves unable to plead for him, or to do what was otherwise fitting, and so had refused to come and speak with him at St. James’s. The Court objected the time they had already granted, and alledged this was a mere delay; but his Grace protested it was true, and offered one of his servants to attest it. Dr. Walker in court declared, he would not be of his counsel, by reason of his employment under the parliament. His Grace desired a convenient time, as was usual in the like cases, not only in respect of his lawyers, but that he might send to Scotland, and other remote places, for Witnesses and Evidences necessary for his Defence; since no prejudice could come by that delay, and this was denied to none in Trial for Life, and had been granted to Mac-Guire and Mao-Hun, two Irishmen. But for his Counsel, the Court ordained, that any of the six he should name might be authorized to advise with him, in private, and to speak in Court in the matter of law arising out of the Fact of the Plea, after the Matter of Fact was

\* Dr. Burnet’s Memoirs of the Dukes of Hamilton, p. 385, &c.

† John Lilburne, in the account of his Trial, in October of this same year [*infra*] seems to refer to something which passed on the Duke’s being required to plead, but which is not mentioned here.

handled, which his Grace was to maintain next Saturday. And for the time he craved, they said, he looked on the unreasonable time that was granted to Strafford and Canterbury, those grand offenders, with whom he had been too familiar, as precedents; but those were precedents without a precedent, and none were to expect the like at this time, especially since there were now so many prisoners to be tried.

Saturday the 17th, his Grace was brought to the Court with some Witnesses, his Counsel being near, but not present; and in order to the parts of his Plea, he first produced Duplicates of the Commission, and Orders from the Parliament of Scotland, and Committee of Estates there. The Court demanded Evidence for both. His Grace answered, Were time granted, he would not only sufficiently prove these, but many other points belonging to his justification. But the Court answered, That unless they were presently attested, *visa voce*, they would not suffer them to be read. Whereupon his Grace desired that his servant, Mr. Lewis, might be examined, whose testimony was accepted, and the Papers he produced were received for Evidences, and read. Next, the Declaration containing the ends of the Engagement was read, and being proved by the same Witness, was left in Court with the former papers. Then the Court, upon his Grace's desire, produced the original Articles of Capitulation, which were read; and Mr. Cole proved he saw them delivered to his Grace about nine in the morning, before the lord Gray came in.

The lord Gray deposed, That two several Summons, which were sent by him to his Grace to yield upon mercy, were both answered negatively in respect of the Cessation and Treaty; That by a Letter from Cromwell, dated Warrington, August 30, he was enjoined to pursue the Scottish forces with all vigour; That he had received letters from the Staffordshire gentlemen with whom the Cessation begun, intimating that they had condescended to it, on purpose to gain a few days time to strengthen themselves, in regard the Scots were so numerous; and that he dispatched away Wayte and Peters that morning in which the Treaty ended, to protest against it.

Peters was next examined, and answered, That going that morning to protest, by order from the lord Gray, he came accidentally to the Duke, where he found the hostages in his chamber, and asked if he was willing to be the lord Gray's prisoner, who answered, he could not in regard of the Treaty; but if he were afterwards to be disposed of, he had rather be his lordship's prisoner than any other's, being of his acquaintance: That he had seen the Summons, and the negative Answer to them: That this was about five in the morning; and that Wayte and he went a part of the way towards the place of treaty, where he heard the Articles were concluded.

Lilburn was next examined, who deposed, That the Articles were signed by himself, and the other Treagues, about five in the morning, and were to be ratified by the Duke and Lambert; and that his own meaning of preserving the Duke's life (he knew not how the rest meant) was only to preserve him from the violence of the soldiers, and not from the justice of the Parliament. At this, Peters rose up, expressing great dislike of Lilburn's gloss, saying, That much tenderness was to be used where the life of so eminent a person was concerned: That he had seen many Articles of War, but never heard of such ambiguity; and that it was clear by those Articles the Duke held his life secured, as well from the Parliament as from the soldiers; and wished to God, that if their Commissioners had meant otherwise, it had been so expressed in the Articles, it being most necessary that Articles in a concernment of life should be plain and certain. The President answered, You say well for the future, but it is now too late.

His Grace resumed what had been said, and spoke much on the Articles for weakening Lilburn's gloss.

Next the Governor and Marshal of Windsor were examined about his Escape from Windsor-Castle. The Governor deposed, That the Duke said to him, he needed not fear his escape, he would be a true prisoner, and not go away though the gates were opened. The Marshal said, he only heard this from the Governor.

The Duke expressed a deep resentment of this injury done him by the Governor, who wounded his honour so much, which he valued above all earthly things; and did shew how unlike it was, that any such thing was either demanded or granted, since that is only done for a little more liberty, whereas he was all the while kept under strict guards; nor had he the liberty of walking in the park, but was always guarded by two keepers, the one lying all night in the room next him, and the other every night locking the door, and carrying the key with him: That the Governor's testimony in this matter was not to be received, he being a party, and now in hazard for his negligence, for he was told that if he escaped, he should die for it; adding, that if he were not a prisoner, he would desire right of the Governor for that scandal cast on him, and chuse no other place for it but Westminster-Hall. But to all this the Governor made no Reply; only the President said, that though he could not blame the earl of Cambridge for what he said, yet for all that the Governor was not to be discredited.

After this, the Duke spake a little to all the three branches of his plea, reserving the fuller enlarging upon them to his counsel. He insisted most on the Articles, which he doubted not were sufficient to protect him: he desired them to consider, how sacred Articles of War were reputed in all places, and among all nations, and how inviolably they were kept, all

princes and states being most careful to observe them, not only to strangers, but to subjects; having great regard to Articles, though only for quarter, much more when there was a capitulation for life: adding the following instances. Elisha the prophet would not suffer the king of Israel to kill the Syrian captains, saying, 'Wouldest thou smite those whom thou hast taken captive with thy sword and thy bow?' The blood of Abner lay on Joab's head, who killed one that had the king's Safe-Conduct. The Gibeonites also, though they used Joshua deceitfully, yet were preserved according to the Articles given them; and not only Saul's house, but the whole land suffered for the violation of them. That prince Robert and the lord Cottington, though excepted from life or pardon by act of parliament, were notwithstanding that, upon the Articles of the Rendition of Oxford, permitted to go beyond sea, and never questioned for life: and the like justice was done the earl of Bristol and the lord Paulet, upon the Articles of the surrender of Exeter, though both were excepted from Pardon: And that the lord Fairfax and the Officers of the army were most careful to see Articles always kept, in which they judged their honour deeply concerned, and had often written to the parliament to that end; therefore he did not doubt the like justice would be done him. By this time it was late, and the President appointed Monday next for the Duke to finish his plea in Matter of Fact, ordering his counsel to be in the Court, for their better information; and so they adjourned.

Monday the 19th, the Duke and his Counsel were brought to the bar. Col. Wayte was examined, who deposed, That the Duke rendered himself to be the lord Gray's prisoner, and desired Wayte to protect him from the multitude, who thereupon left a guard at his going away. But during his Deposition, Peters said, 'He lies, he lies!' And Peters, Spencer, and other officers who were with Wayte at Uxeter, being examined, did totally falsify his Deposition. Divers were also that day examined about the place of the Duke's birth, who all swore, they heard it always said that he was born at Hamilton, and that it was not a thing to be doubted of. Others were examined about the signing of the Articles, who all witnessed that they were signed long before the lord Gray came: and major Blackmore deposed, That the Duke's being the lord Gray's prisoner, was by an agreement betwixt him and Lambert, whose occasions pressed him to go suddenly northward.

After this the Duke spake a little, to shew how little weight was to be laid on Wayte's testimony, which was so evidently disproved. Next, his Counsel asked the Court's directions how they should proceed; and the Court answered, That after the matter of fact was handled, they might plead in law upon all the parts of the Plea: And they told the Duke by the next Wednesday to finish his Evidence.

He desired a Warrant for bringing some gentlemen, then prisoners in Whitehall, who were his material Witnesses; but the Court adjourned, and promised to consider of that motion in the Painted Chamber; yet they granted it not.

Wednesday the 21st, the Court sat, and the Duke was brought to the bar. Some were interrogated about the time of his birth, to prove him *Post-natus*: But it was not proved, one person only swearing, that he heard him say he was some years younger than the king. Evidence was also brought of his conjunction with Langdale, which they accounted Treason; yet even that was not clearly proved, though it was much laboured. Some letters of his to Langdale had been taken, and were brought into Court: but as the letters proved no conjunction, so it did not appear that they were his letters; only Peters asserted they were like his hand. Then a Vote of the two Houses was read, repealing a former vote of setting 100,000*l.* sterling upon him for ransom; and Proof was brought, that notwithstanding Articles were given, yet some had been forced to take the Negative Oath; and thereby they studied to evince that the parliament did not hold themselves bound to stand to Articles.

After this, his Grace resumed the substance of all those Evidences, and shewed that it was not proved he was a *Post-natus*, nor that he joined with sir Marmaduke Langdale, who neither received orders nor the word from him, but marched and quartered apart; and that though he had done otherwise, it could not be criminal in him, since he had no orders to the contrary from the parliament of Scotland, but was commanded by them to join with all who would concur with him for prosecuting the ends of the Engagement; of which sir Marmaduke approving, he had no reason to refuse concurrence with him; neither could this be made Treason by the law of England: Of all which it seemed the Parliament was once well-satisfied, since by a vote they had fined him in 100,000*l.* sterling as the price of his liberty; by which it appeared they looked not on him as a Traitor, but as an enemy who had life granted him by Articles.

Upon this, the Court adjourned till Thursday the 22nd, and his counsel were appointed to plead, and he was to close his Evidence. The Duke was brought to the bar, and by divers Witnesses it was proved, that there was no Rendition made to the lord Gray, but a plain refusal; and that the Treaty was ended, the Articles signed, and Lambert come up, before the lord Gray came thither. There was also produced an Order of Parliament, made four years before, That no quarter should be given to any of the Irish in arms, which inferred that others might have them; and another Order was read of the 14th of July last, declaring all the Scots who entered England enemies, and all the English and Irish who assisted them traitors; and with this he closed his Evidence.

And since he was not to be suffered to speak any more, he enlarged on all the parts of his plea and spake at length as follows :

"That he was sent by the kingdom of Scotland, which was a free kingdom, and independent on England; That he having had his birth, honour, and fortune there, was bound to give obedience to their orders; that for himself, he had lived much out of business, and was seldom in public trust in that kingdom, nor very desirous of any; but that being commanded to undertake the charge of General, for ends which he conceived lawful, and no way contrary to the peace or interest of England, he was obliged to follow their orders: And that by some Papers emitted by the Parliament of England against that expedition, they declared they looked on it as a National Breach, whereby Scotland had violated their Leagues and Treaties with them, so that it was no private act of his: That the entering of the Scottish Army into England, A. D. 1640, was accounted no Invasion nor Treason, but on the contrary was acceptable to this kingdom, which gave a brotherly assistance for it; and that the late unfortunate Army was designed fully for as good ends, and would have so been looked on had it prospered. And for his joining with sir Marmaduke Langdale, he answered it as was before set down. Therefore he being taken Prisoner in such a War, he conceived it without a precedent that he should be tried for his life, for serving his native kingdom in an open war. As for his being an alien, he referred that to his counsel, but said it was undeniable he was born in Scotland, nor was he proved a *Post-natus*; he was also born before his Father's Naturalization, and so not included in it, and his own naturalization had been in agitation in the beginning of this parliament: That his sitting in parliament did not conclude him an English earl; for if questioned, he might probably have been expelled out of the House of Peers, as his countryman Mr. Walter Stuart was out of the House of Commons; and that his being an Earl did not naturalize him, that being the king's single act, whereas naturalization was only by Act of parliament. As for the Articles, it was clear, that Lambert being a general officer, commissioned by Parliament, was impowered to capitulate both by the parliament and by Cromwell, the lord Gray having no authority from the parliament, but only from Cromwell's Letter: that he became the lord Gray's prisoner only by Lambert's order, and that he made no Surrender till the Articles were signed and delivered: That though the lord Gray had protested against it (and yet only an intention to do it was proved), he was not concerned in it, nor bound to take notice of it, Lambert being the Parliament's officer, and sent against him by them: That Articles were to be expounded by their plain meaning, and not by any mental reserves pretended by the commissioners: That by the first Article, he was a prisoner of war, and that it was seldom

known that the life of any such was taken; and that by the second Article, Life and Safety of person were expressly secured without any exception: That if Articles were now violated, it would make the sequel of the wars, if any more followed, a downright butchery, since none would any more trust to a capitulation; which mischief he prayed God to avert: That his Escape out of prison was no breach, he being only bound by the Articles to deliver himself prisoner, which he did, but not to continue so. And he concluded, That he was confident, had he no better Plea, his Articles were sufficient, according to the laws of all nations, to preserve his life."

Then the President asked him, if he had any thing to say as he was earl of Cambridge? Whereupon he and his counsel moved, That if what he had said and proved was not satisfactory for the averment of his Plea, he might answer the Charge exhibited, which he had not yet done. But to this, neither the Court nor their Counsel would yield, though they gave no reason for it, save only that it implied a desire of delay: but the reason, as was said, was, That they knew, had they yielded to that, the Charge had been overthrown, since the law of England does not admit that to be Treason which they charged on him, that he had assisted the king against the kingdom and people by levying war. Then the Court told his Counsel, that Saturday was the longest time they allowed them for performing their part: But the Counsel answered, That it was impossible for them to undertake it, and discharge their consciences to their client, having so short a time allowed them; there being a necessity of searching divers Records for Precedents, which required a competent time, as had been allowed in former cases. But the Court refused to promise it, only they said they would take it into their consideration. The Counsel insisted, and said plainly, they declined the employment on those terms, and would be forced to declare it.

Monday the 26th, the other two officers that had signed the Capitulation for the Duke and his troops, who had been sent for a great way off, were examined, who agreed with the former Witnesses in Matters of Fact, and also with Lilburn, that by signing the Articles they only meant the Duke should be preserved from the violence of the soldiers, and not from the justice of the parliament. Then the counsel began to plead, and all four spoke on the several heads of the plea. Mr. Heron spoke cursorily and elegantly, but not very materially: Mr. Parsons, a young man, spoke boldly, and to good purpose: Mr. Chute the civilian spoke learnedly and home: and Mr. Hales (since the much-renowned Lord Chief Justice of the King's-Bench) elaborately and at length. The heads of their arguments follow:

The Duke being, as was granted, a horn Scotchman, his tie of obligation and subjec-

tion to that kingdom was indispensable and indissoluble; so that his late employment could not be refused when laid on him by the authority of that kingdom, no more than a native of England, living in it, can disobey the commands of this parliament: whereas any subjection the Duke owed the parliament of England, was only acquired, and dispensable. That since no man can be a subject of two kingdoms, whatever tie lay on him to the kingdom of England, it was not to be put in competition with what he owed Scotland; it being a maxim in law, That 'major relatio trahit ad 'se minorem,' and that 'Jus originis nemo 'mutare potest.' That there was an allegiance due to the king, and another to the kingdom, and no treason could be without a breach of faith and allegiance due to them against whom it was committed, for these kingdoms were two distinct kingdoms; and though the allegiance due to the king was the same in both kingdoms, yet that due to the kingdoms was distinct: nor was the actual administration of the kingdoms in the king's person, when the Duke got his employment. Therefore as his allegiance to the kingdom of Scotland was antienter and stronger than any tie that lay on him in England, so what he did by their order might well make him an enemy to this kingdom, but could not infer treason. Yet all this of the allegiance due to the kingdom was founded on no common or statute law, as Mr. Hales himself confessed afterwards: but he urged this well against those who asserted it, it being the universally received maxim at that time.

That whether he was a *Post-natus* or *Ante-natus*, did not appear; but though he were, it did not vary the case, nor his obligation to the place of his nativity: and so though he were *Post-natus*, or accounted a denizen by his father's naturalization, his offence could not be treason, but hostility at most; and by that supposed hostility, he could only lose his privilege of a denizen, but could not be made a traitor, there being no precedent where ever any man was attainted of treason for a hostile invasion; and it was questionable if this offence could amount to that. Nor could any case be alledged, where one born in another independent kingdom, acting by a commission from that kingdom, and residing there when he received his commission, and raising the body of his army in that kingdom, and coming into this in an open hostile manner, was ever judged guilty of treason. Naturalization was intended to be a benefit, and not a snare; so that one might well lose it, but was not to be punished for it. And so when France and England were under one sovereign, divers of both nations were naturalized in the other; yet when hostility broke out betwixt them, many so naturalized fought on the side of their native kingdom, for which none were put to death, though divers were taken prisoners. And in Edward the third's time, though he claimed France as his by his right; yet when the constable of France invaded England, and was taken pri-

soner, he was not tried, nor put to death, but sent back to France, as being a native of that kingdom. And when David Bruce, king of Scotland, invaded this kingdom, and was taken prisoner, great endeavours were used to find a legal ground for his trial, he being earl of Huntingdon in England; but this plea was waved, for it was found that it could not be done justly, that being but a less degree of honour, though king Edward claimed a kind of homage from the crown of Scotland. That if the Duke were on that account put to death, it might prove of sad consequence, in case there was war any more betwixt the kingdoms; since most of the present generation were *Post-nati* and all would be so quickly: and yet if the lord Fairfax, who was both a *Post-natus*, and had his honour in Scotland, were commanded to lead an army thither, and being taken were put to death, it would be thought hard measure. For the duke's father's naturalization, it was true, by the statute of the 25th of Edward 3, provision was made, that children born without the kingdom, whose parents were then in the king's allegiance, should be denizens: but the duke was born before his father's naturalization, which can never reach him, none but the issue after his father's naturalization being included within it; and the word *Hæres* in the act is only a word of limitation, and not of creation: nor did his making use of the assistance of some English forces make him a traitor. It is true, if an Englishman conduct a foreign army, or if a foreigner come of his own head, or in a rebellious way, to assist an English rebellion, it will amount to treason: for the act of such an alien is denominated from the crime of those he assists here, where he owed a local obedience, which was the case of Shirley the Frenchman and of Lopez. But if an alien come with a foreign force, though he make use of English auxiliaries, that only infers a hostility, but no treason; and was the case of the lord Harris a Scotchman, 15 Eliz. and of Perkin Warbeck, both having English help: and though Warbeck was put to death, it was by no civil judicatory, but only by the will of Henry 7, who erected a court-martial for that purpose. The present case was yet clearer, where the alien had authority from his native kingdom, and was commanded by them to make use of English help: so that though Langdale's assisting the duke did make himself a traitor, yet the duke's accepting of it only infers an act of hostility. And whereas it was objected, That the parliament had already by their act which constituted this court for his trial, declared him a traitor; it was not to be disputed what the parliament had power to do, but no parliament had ever done the like before: and the meaning of the act must be, that he should be tried whether guilty of treason or not, since if the parliament have already declared him a traitor, further trial was needless. And it was clear, the parliament by their act in July last, which declared all the Scots who entered England

enemies, considered not the distinction of *Post-nati*, nor judged that inferred treason, since most of them all were *Post-nati*: that many of the officers of that army, who had been taken prisoners, though clearly *Post-nati*, were ransomed, others banished, others still in prison; why then should the imputation of treason be fastened on the Duke, when the rest were used only as enemies?

And for the Articles, they made it appear, they were the public faith of the kingdom, when given by persons publicly authorized, upon the observing of which inviolably, depended the whole intercourse of all nations, and their mutual confidence, which is founded on all states being bound by the acts of their public ministers: That this was not a pure rendition, but a paction concluded upon deliberation, wherein the parliament lost nothing, but on the contrary were gainers; That the parliament had ratified this upon the matter, by voting a hundred thousand pounds sterling fine, to be the price of the duke's liberty: That the secret sense of the traitors pretended, was not to be considered, since all compacts are to be understood according to the clear meaning of the words, and the universal sense of mankind, who look on articles wherein life is granted, as a sufficient security, not only from the soldiers, but from the civil powers; and that these traitors, when the articles were agreed, should have made known their secret meaning, otherwise it was not to be regarded. And it was a most dangerous precedent to admit of collateral averments of secret meanings against express words, much more in a case of life, and yet much more in military agreements, wherein the concerns of armies and nations were included, and which concerned the honour and security of all soldiers. And for this divers precedents were cited. The argument ended thus: That as the court consisted of gentlemen and lawyers, and of martial men; so the plea, consisting of three branches, was the more proper for their cognizance, a part of it being drawn from the law of England, another part from the civil law, and a third part from the martial law: and if the plea, in any of the three branches, was made good (and they doubted not but it would be found so in them all), the court would be satisfied there was reason and justice for preserving the duke's life.

The Court adjourned till Friday the 2d of March, and the Duke being again brought to the bar, the Counsel for the people pleaded, but so poorly, that all who heard them were ashamed: but they had one advantage, that neither the Duke nor his counsel were allowed to speak after them, nor to discover their impertinent allegations: which made the Duke's counsel obviate all they could imagine they might say, though they said a great deal so far out of the way of reason, that none could have thought of it; and yet it was so weak, that it needed neither be obviated, nor replied to. Yet at

the end of every branch of their Pleadings, I shall add the Answers against them, as they are set down in some Notes taken by the Duke's Counsel.

They begun with Alienage, and studied to make it appear, that though he was a Scotchman born, yet he was no Alien, having enjoyed all the privileges an Englishman was capable of, as being a peer, a privy counsellor, possessing lands and inheritances, and marrying in England. [But Naturalization cannot be but by act of parliament, and not by the king's single deed; much less by those privileges of which any stranger might participate.]

Next, they urged his father's Naturalization: and since his name was not in that Act, as was in other acts of naturalization, that proved him not to be an Alien, otherwise his name had been put in. [From that it rather appeared he was an Alien, since others found it necessary to insert their children's names; which his father not doing, proves the son an alien still.]

They also urged his being *Post-natus*, which must be held true, since he brought no Evidence to the contrary; and it being so, his tie of subjection was as great in England as in Scotland: That allegiance was only due to the king, and not to the kingdom: That there was a king when he entered into England, and that though he was secluded from the government, yet all writs were issued in his name; so that this Expedition was a breach of the Allegiance he owed the king. [This was the oddest part of all their Plea, since his Charge was, That he assisted the king against the kingdom; and now they did plead, he owed no Allegiance to the kingdom, but to the king, whom they had so lately murdered; the Duke's coming with his army being only to relieve him from the barbarous usage he had met with.]

They also urged at large, That an Englishman's children, in what place of the world soever they were born, were denizens of England, and cited many Precedents. [But the misapplication of them was gross and palpable, those being of persons who were Englishmen before their children were born: whereas the Duke's father was naturalized after he was born; so that he could not communicate that privilege to him, which he did indeed transmit to his children born after his naturalization.]

Next, they pleaded, That the parliament of Scotland had no power to commissionate him to enter into England; and that if some of them were there, they ought likewise to suffer for it; and it was fit he suffered for his masters who had employed him. That it was a pity the king had not suffered sooner. They also produced many Precedents of strangers being condemned as guilty of Treason, for Treasons committed in England; as the queen of Scots, Lopez, Perkin Warbeck, the lord Harris, Shirley the Frenchman, and the Spanish ambassador. [All this was obviated in the former argument, where distinction was made betwixt secret practices and an open invasion with a foreign foe.] They added, That Scotland be-

longed to the crown of England, and so was to be looked on as some of the counties of England. [But Scotland had no Subjection to the crown, but only to the king of England, whom they had murdered, and so they had no power to judge any Scotchman.]

As for the Articles, they pleaded, it was not in the power of the Army to absolve any from the justice of the Parliament, which being above them, was not tied to their Articles; and therefore, though they confessed the words ought to have been less ambiguous, yet they said, the exposition of those who signed them was to be admitted, since every man was to be the expounder of his own words; and pleaded some Precedents about the exposition of ambiguous words. [But the Words here were plain and not ambiguous, only a treacherous equivocation was invented to break them.]

Cook, by a strange subtilty, said, The Articles only secured his life during imprisonment; so that his breaking of prison, and being retaken, put an end to the obligation of the Articles. [Though he broke not prison, but went out at door and gate, which was no crime.]

Mr. Steel, Attorney-General, on behalf of the Commonwealth.

My Lord; The Counsel for the Earl of Cambridge have framed their Arguments upon the fact, as they conceived it proved; and also by admittance of the contrary in some points. I shall use the same method: first arguing from the fact, as I conceive it stated by the Proofs produced; and then by admittance of the contrary, that though the fact should be as they would have it, that yet the law will fall out to be against them.

The Charge being read to the Prisoner, he hath thereunto put in his Plea, consisting of three parts; the truth and validity whereof hath been denied on the behalf of the Commonwealth.

First, The first part of his plea was, That he was employed by the Parliament of the kingdom of Scotland, not to invade this kingdom, but for the ends declared by them. The improvement made of this part of the Plea, is, That the earl was but a servant in this Expedition, and under the authority and command of another, and tied under oaths and penalties to give obedience; if he had disobeyed, he had been liable to punishment; therefore it was hard for him to be punished for obeying also: That he hath not exceeded his Commission: Besides, the Parliament of England, in their Declaration of the 17th of February last, lay the blame of this Invasion upon the Parliament of Scotland: And lastly, That the Earl's case is not unlike that of an Ambassador, who is not to be blamed for acting against a state, if he have it in *mandatis*, as in the Case of the Bishop of Ross, in the reign of queen Elizabeth.

My endeavouring to give satisfaction to all which, I shall dispatch what I have to say upon this first part of the Plea. I shall admit it

proved, That he had that commission and authority mentioned; and also, that the rule is generally true, That a man is not to be punished for an Act which he doth by the necessity of obedience, because he hath not *absolutum arbitrium*, which is required to denominate actions either blame-worthy or excusable: but I shall easily prove, that this rule is capable of restriction, both by the rules of law and reason; and if we observe the distinctions aright, which determine this question, we shall still find the earl of Cambridge within that part which renders him inexcusable.

First, The first Difference is, where the action is lawful, and where unlawful, which is commanded: If it be lawful, a superior command may dispense with some circumstances: but if unlawful, the servant obeying, is not the less to be blamed. I never held that law of Ina the Saxon king to be warrantable divinity: 'Servus si quid operis patrârit die Dominico ex præcepto Domini sui, liber esto,' if the precept itself were unjust.

Now for the action in question, wherein this Earl was engaged; it is not defended by his own counsel, the dispute being only *de modo*, whether he be to be punished as an Enemy, or as a Traitor; though if this argument held, he were neither way to be punished: and therefore certainly the necessity of his obedience is no mitigation for his crime; and if it should, Empson and Dudley,\* with all their monopolizing successors, had been unjustly censured, who always have had Patents and Commissions from authority to plead: And so also all that Catalogue of former Traitors, who have hatched their Treasons and Designs against this state in foreign parts, and have ever had the Pope or foreign princes to put a stamp of authority and command upon them, must by this argument be in some measure justified.—It was never expected from any under command, to write himself more a Servant than *usque ad aras*, those being the Hercules's pillars: whereon a *non plus ultra* is written; and therefore whoever exceeds those bounds, he will find it to be at his peril.

Secondly, The second Difference is, where the Instrument is *inanimatum*, and where an active living Instrument: Of the first it is truly said, 'Instrumenti nulla vis,' all being therein attributed to the principal Efficient, but otherwise of the other. From hence the Statute of 1, 2 Phil. and Mary, c. 10, did justly repeal the Statute of 33 H. 8, c. 20, which had punished a man for Treason, though he became *non compos mentis* before the execution. And no less justly did 25 Ed. 3, *de proditoriis*, by the word 'Imagination' alter in the like point that law which was in use till then, concerning such a person's committing the Act of Treason, such an one being no better than *quasi inanimatus*. But who can affirm this Earl to be other than an active and vigorous Instrument? 'Non modo vivit, sed in Senatam venit,' be-

\* See No. 26, vol. 1, p. 283.

ing a chief member of that Parliament, under whose command he would shelter himself; and by that means he is a Master rather than a Servant, and so met with by that Declaration of the Parliament of this kingdom, of which he would have made an argument for himself.

Thirdly, Where there is *necessitas culpabilis*, the law will not excuse, as it will where there is no crime in contracting the necessity. Those who in former times gave victuals and provision to sir John Oldcastle,\* were not punished as Traitors, because they did it (say our Records) 'pro timore mortis, et recesserunt quam cito potuerunt,' 8 Inst. 10. And upon this reason seems that opinion of Tremayle to be grounded in 21 H. 7, 30, That a Servant may justify the killing of another, to save his master's life, if he cannot otherwise escape.—But if one being drunk commits a crime, though he hath not properly and immediately the free exercise of his will, yet the law reputes him *voluntarius Damon*; and he is not at all the less excusable by our law, 1 Inst. 247. 4 li. Boverley's Case: and by the Philosopher's rule, such a one doth *ignorans*, not *per ignorantiam agere*; and is therein so far from being excused, that he is therefore to be doubly punished.—Now to assume that whereby the Earl's Counsel would excuse him, viz. his Oath and Commission, renders him the less excusable; because both are strong arguments of a free and full consent: for who can imagine them of Scotland to be such mean Statists, as to think that oath equally obliging, which was compulsive to the same, if freely taken; or that that General should be trusted with a Commission over all their forces both by sea and land, as his Commission runs, whose heart as well as hand had not embraced it? And truly, they that have heard his Letters read to sir Marmaduke Langdale, wherein he prays for the increase of the Distractions at London, and for his friends at Colchester, would not judge him an unwilling instrument, but one exceeding, rather than falling short in executing his commission.

Lastly, Necessity of obedience may excuse in *privatis*, but never in *publicis*. If a Femecovert, together with her husband, commit an act which in another would amount to Felony, yet in her it shall not, because *sub potestate viri*, 27 Ass. p. 40, but otherwise the law is in point of Treason; and so is the Judgment of my lord Verulam: 'Nec valet privilegium' saith he 'contra reipublicam.' And as to the Case of an Ambassador urged on the other side, and in particular of the bishop of Ross in the days of queen Elizabeth; I answer, First, The privileges of those who are entertained as ambassadors, are very great, and not to be made Precedents, or assumed by any other; whence 'Proregis Dedecus redundat in Regem;' and therefore before 25 Ed. 3, it was Treason to kill an Ambassador, 22 ass. p. 49. And from hence might arise that privilege shewed to the bishop of Ross. Secondly, It ap-

pears rather to be an Act of Grace than of Justice, that the Bishop was freed, because he was set at liberty after a long imprisonment; which, if not liable to the censure of the law, he should not at all in justice have endured. Also by the Judgment of my lord Bacon, cited by the learned Doctor on the other side, in point of Conspiracy against the State, even an Ambassador is not privileged; yet of this Bishop learned Camden saith in his Eliz. 'Fuit liberatus, qui Rebellioni clam facies subjecerat.' All which were Arguments of Grace; and therefore that Case will be no Precedent for this, wherein also Conspiracies and Correspondencies with many of this Nation have been proved, and are otherwise notorious.—And for that inevitable Labyrinth, out of which the earl of Cambridge cannot extricate himself, but that whether obey or not obey, he is under a mischief, he may for that thank himself; 'Vole lenti non sit injuria:' this is like the plague of an erroneous conscience, which whether obeyed or not, proves a tormentor to its subject.

Secondly, The second Part of the Earl's Plea is, That he is no Englishman, notwithstanding the Naturalization of his father; which, in effect, is as much as to say, and so it hath been insisted on, he is by birth a Scotsman, and by consequence an alien too, and not triable as a Traitor by the laws of England. Concerning the handling of which question, it being that whereupon the validity of the other two doth, in my judgment, principally depend; I shall first answer the material objections which I conceive made by the counsel on the other side, before I offer any thing positively to assert the invalidity of this part of the Plea.

*Obj.* It hath been said, The Proof is not clear for the Earl of Cambridge's being a *Post-natus*; viz. one born after king James's access to the crown of England; and that being but a 'non liquet in favorem vitæ,' the most favourable construction is to be taken for the prisoner.

*Ans.* First, I deny that the Proof amounts to no more in this particular than a *non liquet*; for there is one positive Witness that speaks directly to the Earl's birth after king James's coming to the crown of England: Another speaks to the Earl's own Confession, being about two-or-three-and-forty years of age, which speaks him born since that time; and a third speaks to the common report of his being born since: and if the Proof were but *semiplena probatio*, yet as Bracton saith, that amounts to a presumption; and, saith he, 'presumptioni stabitur donec probatur in contrarium,' especially when the Earl himself, who should have proved the contrary for the making good his Plea, hath offered nothing against it; and being asked, never absolutely denied it.

Secondly, I do agree, that what the Jewish Expositors observe in the exposition of their laws, which founded in favour, is to be observed in our law, in those things which we usually

\* See No. 20, vol. 1, p. 225.

say the law favours; viz. 'Favores sunt amplandi'; and that strict expositions are only for penal rules, according to that of the civilians, 'Constitutio penalns non excedit casum': yet we shall find, that where the penalty of a penal law is against one or few persons, and the benefit redounds to the generality, in that case even a penal statute shall be taken largely against the offender; so the Rule is put, Plow. Com. 36. Plat's Case, where it is resolved, though the statute of 1 R. 2, c. 12, give an Action of Escape against the Guardian of the Fleet, yet for the reason abovesaid, it is, though a penal law, by a benign interpretation, to extend to the sheriff of London; and in like manner, if there were any latitude in cases of Treason and Murder (as there is not), yet to extend it on the behalf of the prisoners, might prove to many thousands *crudelis misericordia*.

Thirdly, Add to this, that the Law of England is so tender of the public weal, that though in other cases it may seem to insist too much upon formalities, yet herein it will dispense sometimes with its most certain rules. Hence it is, that if one pass over another's land, without his consent, to fetch a falcon, or the like, he may be punished as a Trespasser; but not so, if to hunt or kill a fox or an otter (which instances I suppose not unsuitable to the Prisoner), because these are creatures *contra bonum publicum*; which reason the Book gives of the law in that case, 12 H. 3, 10. For the same reason no man shall be punished as a Trespasser for erecting bulwarks on another's land, Dyer 36. Maleverer's Case. And hence certainly was the reason of that ancient law, That capital offenders, who had transgressed against the law, had *Lupina Capida*, and might therefore by the Justice of 'Lex talionis, arte perire sua'; wherein the law followed *Nature Ordinem*: The Rules of Nature are most constant, yet for the preservation of the whole, it will sometimes contradict itself; as to prevent a vacuum, and the like, what an inversion do we see of Nature's most constant and ordinary rules! Do not they, then, in this prove somewhat unnatural, embrace a cloud instead of substance, that fear not to omit the weightiest things of the law, rather than in cases of invincible necessity dispense with some formalities?

*Obj.* But though the earl of Cambridge were a *Post-natus*, yet he is *quasi ligens acquisitus* unto England; and if so, as his allegiance began with an act of the nation, so it might determine by an act of the same power, to wit, by command from the parliament of Scotland.

*Ans.* First, The strength of this Objection, if admitted, would, as I conceive, by a new invented distinction, overthrow the learned and solemn Resolution of all the judges and chancellor of England, 6 Jac. in Calvin's Case, [see vol. 2. p. 559.] wherein all allegiances that the wits of men could imagine, are enumerated, and they are but four, viz. *Ligeantia naturalis, acquisita, localis, and legalis*: and by the judgment of that case Robert Calvin, son

and heir to James lord Calvin of Colcross in Scotland, born three years after king James's access to the crown (as also all other so born), were adjudged subjects of this kingdom of England, *Ligeantia naturali*, by the best and highest allegiance, without any *quasi* at all, in the same kind, and to all intents and purposes that any natural-born Englishman was.

Secondly, The Objection seems to me not only to be against the Judgment of this Case, but against reason also: For what acquisition is there by the party, or what contributes to it, whether he be born in this or that time or place? The conceit that there is any act of the party's in this (as there must be to make a *quasi ligens acquisitus*) seems to savour of the Pythagorean Metempsychosis, or that opinion of Plato, who held a pre-existence of souls, which after came into the bodies, *tanquam in organata*.

*Obj.* It is inconsistent to have two natural Allegiances to two several kingdoms, as it is impossible to have two fathers; in which case 'major relatio trahet ad se minorem.' And in that case the Earl is rather to be reputed a subject of Scotland, where he was born, than of England.

*Ans.* First, It is indeed inconsistent that the same person should in two several kingdoms have two original Allegiances, in a physical acceptation, to wit, to be so born: Yet by construction of law, he that is born in Scotland may have an allegiance to England, equivalent with the other. Thus Calvin by the Resolution of that case was *Scotus patriæ*, and *Anglus privilegio*.—And thus, without any contradiction, it was ever held for law, That the natives of Gascoign and Aquitain, and those other countries which were geographically out of England, were yet in construction of law equally denizens and subjects of England with those born here; in regard of one allegiance and protection wherein they were equally involved, 27 Ass. Pla. 48.

Secondly, No allegiance which gains the name of 'Alta et Naturalis Ligeantia,' can by the Common Law of England be divested, though otherwise it may be by the Civil Laws, there being no *Magis et Minus* that it is capable of, which the Objection would suppose. And the truth is, the Resolution of Calvin's Case answers all the suppositions of any future contingencies, and positively resolves, That this Allegiance cannot possibly be lost by any matter *ex post facto*, no, not by difference of Descents and Governments, 7 Li. 27. And what is agreed to be inherent to a natural-born Englishman, belongs also to a *Post-natus*. 'Non potest patriam in qua natus est exuere, nec Ligeantie Debitum ejurare,' 1 Inst. 129.

Thirdly, And for the Inconsistencies of Allegiances that the Objection seems to insinuate, in the Case of Competition between the kingdoms, Bracton hath met with that Supposal long since, Li. de Acccep. 427, speaking of one that is 'ad fidem utriusque regis, si contingat guerram accidero inter regna;' putting the

Case of one born in France, and indenzized in England: 'Remanent personaliter cum eo cui ligeantiam fecerit, et faciat servitium debitum' 'et cum quo non steterit in persona.'

*Obj.* Though the earl of Cambridge were a *Postnatus*, yet, as this Case is, it makes him not to differ from an Alien, because the kingdoms of England and Scotland were at the time of this Invasion divided, and there were then several administrations of their powers; from whence a double allegiance is to be considered, *Regni et Regni*.

*Ans.* First, if we look upon the judicial powers of the kingdoms in a legal consideration, even at the time mentioned in the Objection, besides the Union of the Kingdoms made by force of 1 Jac. cap. 1, we shall find as strong stipulations and engagements by treaties, continued by Parliament and otherwise, betwixt the nations, as were possibly to be made; none of which were repealed at the time of this Expedition: And so far from that, that the Earl himself hath often at the bar professed, That neither his coming or commission were against the Parliament or Kingdom of England. How then were the powers of these nations so legally and judicially different?

Secondly, The Union of the Laws and Governments of these nations was a thing desired and endeavoured by some, as may appear by the latter part of the statute of 4 Jac. cap. 1, but it was not effected. Therefore the distinction of the kingdoms was taken into consideration in Calvin's Case, where '*Regna*,' was one of the *nomina operationis*, and granted, That though the kingdoms, laws, and nobilities of the nations of England and Scotland were several and distinct, yet the allegiance of all born in either nation after the Union was one and the same. And the Pleading of that Case (which best denotes the law) demonstrates this, That such distinction of the kingdoms was under consideration: for the Pleading was, That Calvin was born '*extra ligeantiam regni regis Angliæ*,' and '*infra ligeantiam regni regis Scotiæ*.' And the learned Chancellor of that time saith, in his *Post-nati*, that the Judgment was, That neither Calvin, nor any other *Post-nati*, were aliens to the king or kingdom of England.

Thirdly, It is agreed on the other side, That there was always one *Ligeantia Regis*: And therefore, even thence, I do infer that there was also one *Ligeantia Regni*; because that Allegiance which was due to the king, was certainly due to him in his politic capacity, though not to that only, or divided in the subject from his natural capacity. However, it may be said nevertheless, as it is in Calvin's Case, (by a Community of Properties) that it was due to the natural capacity also, viz. as it ought ever to be accompanied with the politic; thence it was but just in the Parliament, notwithstanding the King's personal command and opposition against them, yet to permit the taking of the Oath of Allegiance, and not to abolish it till after his death, it being *ad legem Legatio*;

yet the person was so necessary, that without it, it had been ridiculous to administer it in the form it was, in which case '*Majus dignum trahit ad se minus*.' And hence it was that capital crimes committed in one king's time, might be proceeded against after the death of that king, 3 Ed. 3. Fitz. Reuttnch. 18. et Bro. Cor. 178. If the king had purchased land to him and his heirs, though the word "*Successors*," the word of his politic capacity, had not been mentioned, yet he was seized thereof in *Jure Coronæ*, 43 Ed. 3, 90. And if land had been given to the king and another, and their heirs, they had for the same reason been tenants in common, and not joint-tenants, Com. 439, for the same reason. And though many of those persons who have been kings have often oppressed, instead of preserving their subjects; yet still that which Bracton hath said upon the same ground remains true of the regal power, '*Non aliud Rex potest, quam quod de jure potest*,' his Office still being *ex Officio*, as 2 Litt. Co. Wiseman's Case saith; and Fitz. Nat. Brev. 113, out of the Register, to provide for the preservation of his people. And if any other construction should be made, then it must have followed in the king's personal absence, minority, or disability, the kingdom must either have been but weakly, or not at all governed. From all which it may be inferred, That the Obligation and Allegiance which was owing to the king, did include that which *sano sensu* was the kingdom's also.

It remains now that somewhat be spoken for the further invalidating of this part of the Plea; wherein I shall, First, prove, That one born in Scotland, after the Union of the crowns, cannot be to any purpose considered as an alien to England: Secondly, That though the earl of Cambridge had been born before the Union, yet he had not been an alien to England, partly from a national consideration, but more principally from personal considerations; viz. 1. By reason of his local Allegiance both in Scotland and England. 2. *Ligeantia acquisita*; and that by the Naturalization of his Father, or his own denization. Thirdly, That though he had been an Alien, yet as this case is upon the Proofs, he will prove triable for Treason by the laws of this kingdom.

Before I speak of any of these, I might touch upon that part which layeth Murder to the Charge of this Earl; it having been fully proved that several persons by name, amongst many others, were slain and murdered by the Scottish Army. And to make him punishable for this crime there is no need of Denization; it being an offence in itself against the law of God and nations, and no trust requisite to be an ingredient to it, as is required in Treason.

Hence we find Rape punishable in England, committed by a Scot, 15 Eliz. Dyer, 304. and murder done by the lord Zanchar, of the same nation, 9 Co. 116.\* where we find him indicted by the name of Robert Creighton, esq.; which,

\* See No. 99, vol. 2. p. 143.

together with the express authority of 11 Ed. 3, Fitz. Brev. 473, are, by the way, sufficient Warrants for our charging the Prisoner by the name of James earl of Cambridge, without mentioning his dukedom, as he hath often intimated we should have done.

And if the earl should say, he killed not these persons himself, his counsel can soon tell him that's not material; the law being, That if divers persons come to do an unlawful act, and one commit a Murder or Treason, it is so in all. 1 Mar. Dyer; 38. 13 H. 4, 13. 9 Ed. 2, Fitz. Cor. 433. But the truth is, I shall not rely upon this, being not willing so high an offence should pass under any other name than that of Treason; therefore I pass to those afore-mentioned considerations, which will evince his crime to be no less than Treason.

1. As to the first of these, there being so much said in the argument of Calvin's Case, I shall omit the citing of any thing particularly from thence, and select something from the statutes made shortly after the Union. It is agreed by all historians, that these two kingdoms were antiently but one, '*Divisos orbe Britannos, et subducta Britannia mundo.*' Thence it is observable, that in the Preface of 1 Jac. cap. 1. by the access of the king of Scotland to this kingdom, the Parliament, speaking of the Union, correct themselves in these words. 'Or rather a re-uniting of these two Nations (though antiently but one).' If so, this Re-union amounted to no less than (as it were) a national reuniter of the antient Union.

For the settlement of this Union, Commissioners were chosen to compose some differences betwixt the nations, and to consider what was fit and necessary to be done for the commonweal of both kingdoms, 1 Jac. cap. 2. These commissioners consult long about it; and because they could not perfect it within the time prefixed, an Act passeth for longer time, 3 Jac. cap. 3.

At length the work is finished by the Statute of 4 Jac. cap. 1. By which all statutes that express or imply any strangeness of the one nation to the other are repealed. And moreover, it doth enact and say, 'That if there had appeared any other Statutes of this realm of England, wherein any thing is ordained, enacted, and established, expressly and by name, against the Scottish as enemies, or Scotland as an enemy-country to the king of this realm, or the state of the same; we should, for so much of them as concerneth Scottish men or Scotland, have utterly abrogated and annulled the same, seeing all enmity and hostility of former times between the two kingdoms and people is now happily taken away.' So the statute. After which it seems as strange, that any born in Scotland, after and during the continuance of that Union, should make themselves strangers to England, as if natural-born Englishmen should have made the same allegation.

In the aforesaid Statute of 4 Jac. 1, there is a Clause, That no Scotsman, coming into

England, to prosecute the law against any Englishman offending in Scotland, is to be arrested here, except for Treason and Murder. And in the latter end of the Act, amongst other things, it is enacted, 'That if any Englishman should commit Treason or other crimes in Scotland, and come into England, he shall not, upon his apprehension here, be sent into Scotland, to have his trial there, but be tried where he is taken.' But the Statute of 7 Jac. cap. 1. which was the year after the Resolution in Calvin's Case, repealed that clause of 4 Jac. 1. last mentioned, as to all offences but Treason, leaving the offenders in that kind to be tried in the kingdom where they were apprehended. And though the Statute speak only of English, yet the like Act was to pass in Scotland, in case any of that nation committed treason here; else neither was to be binding to the nations.

2. In the next place, somewhat may be said from a national consideration, to prove the Earl no alien here, though born before the Union; not that my purpose is to endeavour the revival of that antient homage done formerly by that kingdom to this; it is not worth the mentioning, in comparison of that love and those engagements which have been betwixt us, and, if it may be, I wish '*sic simus in ævum.*' But because somewhat hath been on the other side cited from the Stories of Bruce and Baliol, in the days of Edward 1, and for that I find both Law and History afford some matter for this argument, I hold it my duty not to be altogether silent in what passed in those times, and since. I will not insist upon those several Appeals made by Magdolphus, and others of the Scottish nation, to Edward 1, *contra custodes Scotie*, and against the kings of Scotland themselves: All Arguments of Allegiance then acknowledged from that kingdom to this.

But to instance in some Precedents nearer to this in question, Symon Frysell, in 54 Ed. 1, anno 1306, a native of Scotland, came in an hostile manner from that kingdom to invade this; and being apprehended here, he was condemned as a Traitor. The words of Mat. West. 456, concerning him, are, That he was '*a Turri Londinensi per plateas distractus, ut proditor.*'

In the same year of Edward 1, William Wallis, the commander in chief of the Scottish forces, and a native of that nation also, as the Prisoner was, came into this kingdom: and being apprehended, was, saith Walsingham, fol. 61, '*Londonias usque ductus et judicialiter condemnatus, trahitur, suspenditur, et ultimo decollatur;*' though he pleaded, as our Historians tell us, what this Earl doth, That he was a subject of Scotland, and not of this kingdom, and therefore ought not to be tried here for Treason. In 42 Ed. 3, cap 3, in the lord Beaumont's Case, when it was replied that the party objected against to be an alien was a Scotsman, the Plea is no longer insisted

upon. A protection, *quia prefecturas*, lies not into a country that is within the allegiance and protection of England, 7 H. 3, cap. 14. Yet we shall find the only reason given wherefore it was granted into Scotland was because of the wars that were then betwixt the nations, 7 Ed. 4, c. 27. After the ceasing of which wars, it may be collected by the Book, a protection would have lien no more thither, than it would have lien into Wales or Ireland.

In 13 and 14 Eliz. Dyer 304, one was arraigned for a Rape. At the return of the *venire facias* to try him, he pleaded that he was a Scotsman, and desired a *mediate lingue*, which manner of Trial is granted to Aliens by the statutes of 27 and 28 Ed. 3. But by the Judgment of the Judges of both benches it was denied him, for this reason, amongst others, Because, saith the Book, a Scotsman was never here reputed for an Alien, but rather a Subject.

*Obj.* Whereas it hath been said, This was because the statutes of 27 and 28 Ed. 3, were made when Scotsmen were generally reputed subjects to this kingdom :

*Ans.* I answer, 1. That the Book gives no such reason. 2. To affirm this, is to suppose the Judges, by such a foreign conceit, to go against the express provision of two acts of parliament, and the constant practice in pursuance thereof.

In the same year of 13 Eliz. in the Case of the Duke of Norfolk,\* the Evidence of the bishop of Ross, a Scotsman, was offered against the Duke by the counsel for the Commonwealth; which the Duke opposed from the Judgment of Bracton, That a foreigner's testimony was not in that case to be received. But Caillin, Chief Justice, though he says nothing to Bracton's opinion, touching *exterorum testimonium*, yet he gives the rule of the court, That the testimony was to be received. Camden's Eliz. 214.

After this time also the queen of Scots was tried in this kingdom, though not upon the statute of 25 Ed. 3, yet upon the statute of 27 Eliz. cap. 2, then in force. And though in the Proceedings of that Business Commissioners of both nations met, and that the Scots Commissioners did protest, that though they did join with our Commissioners, yet they did thereby make no acknowledgment that they were other than a foreign nation to this; yet the Englishmen protested against that Protestation, as we find in the History of that Queen.†

3rdly, But to pass from this national to a more personal consideration, and from thence (though he were an *Ante-natus*) to prove the Earl liable to punishment for Treason against this State, and that by a local allegiance both in Scotland and England: Wherein it must be granted as a principle, and cannot be denied, but that if an Alien come into this nation, and there abide and commit that Act which would

always be Treason in an English subject, it is by the law Treason in him during that abode, because he oweth *Localem Ligantiam*, and the Indictment against him shall say, 'contra Ligeantiam suam debitum,' 7 li. Calvin's Case. Thus in 36 Eliz. the Portugals here in England join in an Act of Treason with doctor Lopez; and it was adjudged Treason in all. Thus this Earl, though he had been born before the Union, yet he lived in Scotland after the Union, and at the very time of this Invasion, whereby he became a subject, at least *Locali Ligantia*.

So in England also, not only by his former residence here, which he will say perhaps was avoided by his removal hence, but by his late coming in, he became *Ligeus* here *Locali Ligantia*, because he came from a kingdom then, by his own confession, in amity with this. This was the Case of Shirley, a Frenchman, 4 Mar. who came from France, then in amity with England; and being taken levying war in an hostile manner, was indicted and executed as a Traitor, Dyer 144. And as the Book puts it, 7 li. Calvin's Case, if he had had issue here, that issue should have inherited.

4thly, In the next place, I shall prove the Earl of Cambridge (though he had been an *Ante-natus*) to be a subject of England *Ligeantia acquisita*, and that by the Naturalization of his Father, or by his own denization. But, first, as to the Naturalization of his Father :

1. The Act of Parliament hath been read and proved, whereby the father of this Earl, by the name of James marquis of Hamilton, earl of Cambridge, in 21 Jac. was naturalized to be to all intents and purposes a subject of this nation, as if he had been here born; with a further Clause, That his heirs might inherit and purchase any lands, tenements, &c. By which Act it clearly appears that this Earl is naturalized also: For, 1st, though in the case of a Denization there may need the word Heirs to extend it to them, because it goes as it is limited, it may be for life, in tail, or upon condition, 9 Ed. 4, cap. 7, yet it is repugnant to suppose that in point of a Naturalization, because he that is born in England, as by relation this makes him, without any other expressions, conveys the right to his heirs. Hence Naturalization is *never temporanea*, though *data*, 1 Inst. 129. 2ndly, Here are not wanting words neither, that reach to the heirs, if necessary; for the Act is, That his heirs may inherit and purchase, &c. And in pursuance hereof it is notorious that this Earl hath done both. But we shall find that oftentimes no more goes to express a Naturalization than this; no other expression is used to import the privilege of being English, to them that are born of English parents beyond sea, but only that they may have, and freely bear the inheritance within the same allegiance as other inheritors, 25 Ed. 3, 'De natis ultra Mare.' And in 3 H. 6, cap. 53, Hall and his Wife brought a Writ of Traver: The Tenant pleaded that the Feme was an Alien. The Demandants reply, That the Feme in the time of Henry 4, was enabled by act of

\* See No. 56, vol. 1, p. 957.

† See No. 64, vol. 1, p. 1161.

parliament to purchase lands and tenements, &c. With which Reply the Defendant's counsel rested satisfied, as if the replication expressed it sufficiently that she was naturalized; and thereupon demanded view.

*Obj.* But it hath been objected, That this Act can have no other effect than if the now Earl's father had been born in England: And though he were a native Englishman, yet having issue this Earl by a native Scotswoman in Scotland, the issue thereby remains an Alien, though his father were naturalised or born in England.

*Ans.* 1. I shall easily grant both that this Earl was so born in Scotland, and that the Naturalization amounts to no more than if the old Earl had been born in England; but do deny the inference drawn from thence, That therefore the now Earl must be an alien: For though in former time some controversy hath been touching this question, viz. Whether the issue of an Englishman, going out of the kingdom, born of an alien woman, shall be a subject of England, or no? yet I take the law to be clear at this day, that such issue is a subject of England.

By the Common Law, if Father and Mother, both English, have issue beyond sea, that issue is English, 1 R. 3, 4, the statute of 25 Ed. 3, 'De natis ultra mare,' being declarative of the Common Law, 49 Ed. 3, cap. 10. And if the reason and practice of the Law be examined, we shall find it to be the same, where the Father only is English, for these reasons:

First, Because at this day any person may go from this kingdom to another without Licence, though he be neither nobleman, merchant, or soldier, except some restraint by a *Ac erant Regnum*, Proclamation, or other act of state be against him. So is it resolved, 12 and 13 Eliz. Dyer 396. And though all, except persons so qualified, were restrained by 5 R. 2, c. 2, yet that statute is repealed by the statute of 4 Jac. cap. 1, made principally in reference to Scotland. Therefore however the law may be as to such as go when prohibited, or who stay beyond sea when commanded to return; yet as to all others, at this day, and always as to noblemen, as the father of this Earl was, upon whom no restraint was ever put by common or statute law, certainly the law is otherwise, especially when the removal is to a country in amity, as Scotland was.

Secondly, 'Partus sequitur semen,' by the common law: therefore, in 4 Ed. 4, 25, Statum Villen. 9, if a Freeman marry a Nief, and have issue, that issue is free; but otherwise, if the man had been villain, and the woman free.

Thirdly. The woman alien by the marriage is indennized, and the issue then must needs partake of the privilege. And it appears by 26 Ed. 1. Rot. Parl. 1, that when Edmond, the brother of Edward 1, who married the queen of Navarra, died, all the Judges resolved she should be indowed. And what though she should not, as in other cases it hath been doubted, yet that hinders not, but during cover-

ture she was indennized, and that's enough to indennize the issue. If a Nief marry a Freeman, it is and hath been a doubt, whether this be a perpetual enfranchisement to the woman after the death of her baron: But it never was doubted but that both herself, during coverture, and her issue ever after, were enfranchised. Lit. Sect. 187. 1 Instit. 136

And for express Authority in the point in hand, besides the antient Authority of Abridg. Ass. 39. tit. Bastard. 7. and Bro. Denizen 21. it was the Judgment of all the Judges of England, 2 Ca. in the Datchy-Chamber, betwixt the King and Eaton, usually called Stephenson's Case, the Record whereof is ready to be produced; where Judge Yelverton, and Hervey then Judges Assistant to that Court, declared it to be their Judgments, as also of all the other Judges, that the two sons of Stephenson, born beyond-sea upon the body of an alien, were denizens.

*Object.* I observed but one book cited for maintenance of the contrary opinion, and that was 26 Hen. 6, where indeed it is 22 H. 6, 38.

*Ans.* Which Authority is against, not for that Opinion for which it is cited: for in an action there brought, the Defendant pleads that the Plaintiff's ancestor, in the time of Hen. 4, went beyond-sea without licence, and there had issue the Plaintiff. Upon this Plea, Arderne the Plaintiff's Counsel demurs; but saith the book, Prisor the Defendant's Counsel durst not demur.

Secondly, If the book were as it is supposed, yet it makes nothing against the law at this day; because by the book it appears, that the Plaintiff's ancestor went beyond sea in the time of H. 4. without licence; which being after R. 2, there was a restraint upon him, except by licence, or qualified as that statute of R. 2, requires: which restraint is now abrogated, as is before said; and the inhabitants of England, as is suitable to all Islanders, may travel at pleasure, except especially forbidden: and so whatever the law was then, it is otherwise now; 'Mutata ratione legis, mutatur Lex.'

*Object.* What if the present Earl did himself endeavour, or, as he saith was advised, notwithstanding the Naturalization of his father, to procure himself to be naturalised, or indennized?

*Answer.* Yet that could be but in *majorum cautelam*; as some savings have been inserted into acts of parliament themselves, not for necessity, but for satisfaction of the lay-gents, as our Books express it, 1 li. Coo. 24. Plow. Com. 379, upon the statute of 5 Ed. 6. And even in that case of Stephenson, though the Judges assistants delivered what was their own Opinions and of the rest of the Judges; yet if making the party a denizen would end the controversy, they did advise it.

5thly, Besides this purchase of his father's, the Earl hath himself contributed to his own denization, not so much by inheriting his fa-

ther's dignity, and purchasing and enjoying himself lands in England, that being rather an evidence of what he formerly was, than making him what he was not before; but by the Writ of summons sent to this Earl himself, 15 Car. The Record whereof hath been read, commanding him 'ex fide et ligeantia sua' to appear in parliament as a peer of this realm; who accordingly did appear, and acted in this parliament, being chosen of several committees in the Lords House, to consider of many things of great concernment, some whereof were for the Strength of the Nation, as hath been fully proved by the Records of the Lords House. All which actions are so inconsistent with his being an alien, and would be such a solecism in state to admit an alien to be invested amongst others with a judicial power, that rather than it should be admitted, all this laid together will (I conceive) amount to at least a denization.

I will not say, that the granting of every office, or the being employed in any transaction which concerns the law or government of the kingdom, will make an alien a denizen; the Books of Ed. 4, 1. and 14 H. 4, 19. forbid me to say so; but it is another thing to have a judicial power in parliament, and to sit by virtue of such Summons in the Parliament of England. The lord Delaware was disabled to sit in the house of peers during his life; but he dying, and a Writ of Summons coming to his son, he was by virtue thereof enabled not only to sit, but to enjoy that place which his ancestors formerly had done, 11 li. Coo. 1. And in 39 Ed. 3, 29. Umfrevil earl of Angus ought to be named Earl in the Writ against him, because by that name he was summoned to the parliament; and for not naming him so, the Writ abated. A Denization is a kind of a national manumission: now as there is in law an express infranchisement of a villain, and an infranchisement in law, Lit. sect. 205. so it may be said of denizations. And amongst other manumissions by act in law, I find in Britton, fol. 79 and 82. If a villain were made a knight, this did make him free *ratione dignitatis*, and did not make the conferring of that dignity to be a void act, parallel whereunto is the case in hand.

Sixthly, The last thing I shall insist upon, touching this second part of the Plea, is to make it appear, that though the earl had been born before the Union, and an Alien, that yet there are other circumstances in this Case yet remaining, which will clearly make this act of his to amount to no less than treason, viz. his coming from a kingdom in amity with this, and his marching in hither with English traitors. That he marched in and held correspondence with sir Marmaduke Langdale and his son, and with sir Thomas Glesham, and divers others, hath been fully proved; and that that kingdom was then in amity with this, besides the National Treaties and Engagements unrepealed, it appears as well by the Earl's own Confessions at the bar, as by the

words of the Scottish Declaration made upon this Expedition, read at the Earl's own request; which, whatever it be, doth yet conclude this Earl and all his party from alledging the contrary for their advantage, it having been often reiterated by him; and also therein said, That this Expedition was neither against the Parliament nor People of England: besides, that it is no slight matter to make nations in amity to become open enemies in a legal construction, which we are now upon, as appears by the book of 19 Ed. 4, 6.

Now that these circumstances will make this Act reach to Treason, appears by these authorities of law. In the days of queen Mary, France and England were in amity; Shirley, a French native, during that amity, joins himself with some English traitors: Shirley is apprehended, and indicted as a traitor, 'contra hanc geantiam sua debitum,' 4 Mar. Dyer 144, which is confirmed for good law likewise, 7 li. in Calvin's Case, by all the Judges: with which agrees Brook, Treason 32, and Crompton's Jurisdiction of Courts 72, and Mr. Justice Daltson's Reports, 3, 4 Mar. All which Authorities agree in this difference, That if alien enemies join with English Rebels, and be apprehended, the aliens shall be tried by martial law, or ransomed; but if alien armies so join, it is treason in all. And it is observable that the Case is put cautiously in H. 4, and so abridged by Brook. Treason 1. That where alien enemies join with English, the aliens shall be tried by martial law, and the English as traitors.

*Obj.* The Objection hath been made, and so far it seems the law is agreed, That if Aliens fight under the banner of English, that this may be Treason in all; but not if the English fight under the command of Aliens, which is alleged to be the case in hand.

*Answer.* 1. I cannot safely admit that which the Objection takes for granted, that the English were the Auxiliaries, and the Scots the Principals in this act, when I find it in the Proof offered by the Earl himself, that he came in by the invitation of their friends in England, and when I remember what was designed and produced in the South of England before and at the same time with this expedition. 2. But admit it to be otherwise, yet if this difference were material, then it should follow likewise, That if alien enemies did fight under an English command, it should be treason in all: but it is not so. 3. The law makes no such difference, nay, the very Objection seems to be made and answered, 4 Mar. Dyer 144, for the book saith, That though Shirley were an Alien, yet 'hoc non refert tempore pacis inter Anglos et Gallos;' the weight is laid upon *tempus pacis* only. 4. The true reason of the law in one Case is the same in both; which I conceive to be from the detestation of conspiring with an inward secret enemy, and from the trust the law reposeth in such as are of a country in amity. There is no treason, but where there is a trust: hence antiently Treason, in its genuine and original acceptation, was only and

properly amongst allies and friends, who mutually did repose confidence in each other, as may be seen in the *Mirror*, fol. 30 and 301. And that a greater trust was placed in Aliens armies than in others, appears in that our law allows not only traffic and commerce with them, but also allows them to be to some purposes denizens; namely, as to the bringing personal actions; which if they bring, it shall not be allowed to plead that the plaintiffs are aliens; 19 Ed. 4, 6, and 6 II. 8, Dyer 2.

*Obj.* But the Earl hath objected, That upon the Scottish forces coming in under his command, they of that nation were by the House of Commons voted Enemies, and those of this kingdom who adhered to them, traitors.

*Assw.* 1. The words of that Vote seem to be exclusive of the prisoner, mentioning only those under his command. 2. Though every enemy, in the legal signification of the word, be not a Traitor, yet every traitor is an enemy; and therefore if now he be proved a traitor, he may be well enough an enemy within that Vote. The present Charge against him is a Charge of High-Treason, yet the Conclusion doth not improperly pray judgment against him both as a traitor and public enemy. 3. Take the words in the strictest sense, and the Vote only names those of the Scottish nation enemies, but those of this kingdom traitors. Now the labour hath been, and I suppose it clear that the Earl himself is of this nation, and so a Traitor by that Vote, from which he would derive an argument for himself. 4. If yet any other construction should be made, '*Leges posteriores priores abrogant*;' he is, by the act whereby this court now sits, ordered to be tried for Treason in the same kind as the rest, who are now under question: and if his fact be Treason, it will easily follow by an argument of *à denominatis*, that he is a Traitor.

The third part of the earl of Cambridge's Plea is, That he is a Prisoner of War, and rendered upon Articles, and that those Capitulations were made before his rendition with major-general Lambert's commissioners. That there were Articles, and he a Prisoner of War, I shall agree to be proved; as also that one of those Articles was, That he should have quarter, and have his life assured: and it must be agreed on the other hand, That the lord Gray, who had equal authority, protested from the first against that Treaty, and after took him Prisoner before any assent thereunto. But whether, by the proof, the Earl were not a Prisoner before signing the Articles; and whether before the Articles were to have any effect, the same were not to be ratified by the commanders in chief, is submitted to judgment upon the Evidence. That therefore I may do the Prisoner right in this point, which he seems to make his strongest asylum, I shall admit that there were such Articles, and waive the relying upon the other circumstances, which may not seem so clear in proof.—Nevertheless I shall briefly shew my reasons, wherefore I apprehend no security from the stroke of Civil Justice be-

longs to the Prisoner by this refuge; for as to the military, is not the contention.

First, if these Articles be of avail against the civil power of the state, they must in effect amount to a pardon or discharge of Treason (for this point doth take the last point by admittance, viz. that the Fact is Treason). Now though the military power may exempt a Prisoner of War from the execution of the sword, and of their own power; yet it is not in their power, nor do they assume or ever challenged such a power, as to exempt Delinquents and Traitors from the execution of the magistrate; for the bringing of whom to condign punishment, the soldier was at first armed, and the war principally begun: and if it should be in the power of one soldier, it would *pari ratione* be in the power of all, as well to spare all as one; and if to grant a pardon of life, then likewise for their livelihoods. And so the end of the war, and the satisfaction promised, would be in the power of the servants of the state to frustrate; not that the Articles have no effect, for he was by them freed from the immediate execution of the sword.

Secondly, The pardoning of Treason is a power so inseparable to the Supreme Power, that by the authorities of law it is not communicable to any others: in 5 Ed. 4, 123, it is made a great doubt, and so said to be 1 Bro. Treason 22. Mercy and Justice being not transferable. 7 li. Co. in the case of penal statutes, 9 Ed. 4, 2, and 20 II. 7, 6. It is true indeed, there was a time when some had gotten this power into their hands, but by the statute of 27 II. 8, cap. 24, this power was resumed into the supreme power, and there it hath since lodged. And however we dispute not what the parliament may do by express words, as they have done in many acts and tenders of indemnity; yet without such expressions, not by any implicit power, nor *ex officio* can any justly assume it.

Thirdly, By the rules of law no Officer or minister of state can give away or dispense with the interest of the Commonwealth. If a customer, who is an officer of state, take a bond in his own name for the importation of bullion, he cannot discharge this bond; 4 Ed. 4, 4 and 12. The King was the supreme Officer of the Commonwealth, yet if an indictment of nuisance had been preferred against one in his name, it had not been in his power to have discharged this offence; 3 Ed. 3, Fitz. ass. 445. Nor could he for the same reason by any *Non-obstante* dispense with the penalty of any Statute which did concern the interest of the commonwealth. 12 Jac. sir Arthur Ingram's Case, and II. 36 Eliz. betwixt Hammond and Griffith, in an Information upon a penal Statute, the Informer died, yet the King's Attorney might proceed. The difference I apprehend to be, as to the point in hand, betwixt one triable by Martial Law merely, as an Alien enemy is; for such a one being triable by the sword, if taken, may be discharged by that power, though in that case I totally exclude

not the legislative power; but for a Traitor, originally and legally only triable by the municipal laws of a state, to be absolutely discharged by a subordinate power, without the concurrence or confirmation of the magistrate, will ever be strange to me, till I find that Rule overturned of 'Nil dat quod habet,' which can never be in a just and moral sense.

Fourthly, However the words sound, the intention and true meaning of the parties was not to free those that were concerned from Justice, if the State required it; and intentions are the best rules for construction in these cases. That it was intended only in this Treaty to free the prisoner from the present execution of the sword by Martial Law, and no otherwise, hath been sworn by two of those gentlemen that were Commissioners under major-general Lambert, who have sworn their own intentions. 'Words,' saith Bracton, 'are but *testimenta rerum*,' as the body and outward form; the true meaning and intention of parties is the life and soul of every contract; as for '*sensus literalis*,' it hath been (I have observed) '*via regia*,' but it hath not proved unto that side '*via tuta*.' However words sound, the Exposition must be '*secundum subjectam materiam*.' In 41 E. 3, 6, if one having divers faculties hath an annuity granted to him '*pro concilio impenso*,' the Words are general, but it shall be construed for counsel in that art which was intended. And as Brodnet saith, in 14 H. 8, 2. Contracts shall be expounded according to the intents of those that did contract. Cicero saith, speaking '*de justitia*,' as a Judge, not as an advocate, fol. 24, to cavil with words against the mind of the parties, '*est calumnia quædam et malitiosa Juris Interpretatio*;' in which place he puts a case upon a Treaty, as ours is, of one who had made a truce for 130 days with his enemy, and taking advantage of the letter, fell upon his enemy in the night, alledging the truce was only for days, which the orator derides as mere injustice. And no otherwise may the literal construction, contended for, be in the present Case, except the letter must be observed or not observed, as it proves advantageous or disadvantageous to the Prisoner. Besides, it is usual in law, that by Averments the intentions of parties take place, where the letter would not so decide the question; as 5 li. Co. 68, and 21 R. 2, Fitz. Devis. 37. Nor do I see, how in the penning those Articles any other expressions could well have been. If provision had been made, that the Prisoner should have been exempted from the power of Civil Justice, that had been void; and if it had been expressed, that nothing was by those Articles intended to exempt him from Civil Justice, that had also implied a power in them, if they had seen cause, to have given an absolute discharge from the magistrate; which had been equally by construction derogatory to the Civil Power.

Fifthly, If the Earl had ever been *de facto* pardoned, yet he may seem to have lost the

benefit thereof by his Escape made after a special promise to the governor with whom he was Prisoner. The Civil Law, as Fortescue observes, cap. 40, '*Libertinum ingratum in pristinam redit servitutem*;' and our Law saith, If one hath committed a capital crime, and, being pardoned after, do but break the peace, he forfeits the benefit of the Pardon: 3 H. 7, 7, as Bartue did the benefit of his Licence to travel, by his resort to the Fugitives, 2 Eliz. Dy. 176. And I conceive no difference, whether the condition be expressed or implied; which I infer not to make the Escape Treason, being not so charged, and the Statutes of 2 H. 6, and 14 Eliz. being expired concerning that; but only for this purpose it is enforced, that he who rendered himself up a Prisoner of War, and had for that consideration Quarter granted him, and yet after breaks that which was on his part to be performed, hath thereby deprived himself of that privilege which otherwise he might have enjoyed.

*Obj.* If now the Prisoner shall be questioned for his life, who by the Rendition of himself had quarter given him for it, how is the consideration made good which did induce him to surrender? Besides, there if he had died (as the Earl himself said), he had preserved his Estate, and avoided the consequences of Attainder.

*Ans.* It is strange that it should be thought no Privilege to have so much time to die, in case there were certainty of it, above a death by military execution, which usually is sudden, and '*sine strepitu Judicii*.' 2. Is it no privilege above an immediate death by the sword, to have a fair judicial Proceeding by a Charge against him, putting in his own Plea thereunto, the Matter of Fact by Witnesses and other Evidence proved on both sides, and counsel assigned him of his own choice to argue his own cause in point of law, and himself to be heard as much as he could speak in his own Defence? 3. And the Danger seems by this manner of Trial not greater than before; for he that dies a Traitor in *furor belli*, because himself is the cause why formalities of legal proceedings against him cannot be observed, by the ancient law forfeited his estate, and remained attainted notwithstanding. Plowd. Com. 262. Fitz. Dower. 106, where, in a Writ of Dower, the Demandant was barred, for that her husband went into Scotland, and joining himself with the enemies, died in enmity.

*Object.* As to the Examples of Joshua with the Gibeonites, and of the prophet Elisha forbidding the king of Israel to smite those whom he had taken captive with his sword and bow:

*Ans.* I answer, As to the first, viz. that of Joshua with the Gibeonites, God forbid but that as that, so all other Leagues and Treaties should be kept so far, as to bind that Power that made them, and who can rationally expect more? Now, Joshua was the successor of Moses, and a magistrate as well as commander. Besides, it is said the Princes of the Congrega-

tion swore unto them ; and, had these circumstances been incident to this case, the dispute had been ended. 1. As to the other Instance, the Men of Syria had a personal quarrel against Elisha ; and therefore none being interested but the prophet, it might well become his piety to be their intercessor. 2. For any thing appears, the Prophet only speaks against their being smitten with the Sword of War, which, if it had been drawn in cold blood, might have been the Blood of war in peace ; but not against the sword of civil justice. 3. These enemies were taken in the midst of Samaria, *in cruce prelio* ; and therefore bread and water might well be set before them, that they might eat, and go to their masters : but there hath been in this case much blood drawn, and mischief done ; for the avenging and satisfaction whereof, justice cries to them that bear not the sword in vain.

And now (my lord) though I might have demanded Judgment for want of the Prisoner's making good his own Plea, which he ought to have done before I had said any thing to the contrary ; the Plea of being an Alien lying on his part to prove that pleads it : 9 Ed. 4, 12 and Dy. 300, and the Plea of a Pardon being a confession of the fact, if not made out, proves fatal and final also to the party ; Stanf. Cor. 150. Yet nevertheless, for that the Prisoner hath not been confined hereto to the strict formalities of the law, I have also, on the behalf of the Commonwealth, taken the privilege of speaking thus much for asserting the Invalidity of his Plea. And therefore, upon the whole matter, having now said what hath prevailed with my Judgment to offer in this case, I humbly submit the same to the judgment and consideration of this Honourable Court.

The Court adjourned to Tuesday, being the 6th of March ; and then the Duke was brought to the bar, and the Judges sate in scarlet. They rejected the Duke's Plea in all its branches, and found him guilty of the Charge whereof he was indicted. But before Sentence, Bradshaw the President resumed all, and spoke long for aggravating of every particular, justifying every thing the Counsel had pleaded, as if it had been all both good law and good reason. Then he caused to be read the Earl of Essex's Commission, to shew how little power was given him : (But spoke nothing of Fairfax or Lambert their Commissions, which had been more pertinent, but the reason was, they were ampler, and yet the Parliament had never refused to ratify any Articles Essex gave.) He confessed the Duke's Articles were fuller than any others, therefore he would insist the more to invalidate them. He said, It was true, if there had been a war proclaimed, and prosecuted betwixt a foreign nation and enemy and England, then by the law of nations, to which their law was consonant, Articles signed by the Commissioners of both parties should have been kept inviolable : but the Prisoner was no enemy ; for when the ordinary

course of justice was obstructed by the late king's prevailing party, so that neither constables nor sheriffs, nor other civil officers, could lay hold on such Delinquents as he was, or bring them to punishment, the Parliament was forced to raise an Army, commissionating their generals to bring such to condign punishment. This being the end and substance of their Commission, it was not in their power, who were but the Sword of Justice in the Parliament's hand, to give Articles for securing any from the justice of the parliament, since it was never intended their Acts should limit that power that gave bounds to them. He added also, That the Court was fully satisfied that the Duke was naturalized. At last Sentence was given against him, " That his head should be sever'd from his body on Friday next, being the ninth instant : " yet it was remitted to the Parliament's consideration, what mercy should be shewed to him ; and so the Duke was carried back.

The rest of that day, and the next day, the Duke was earnestly solicited to preserve himself by making Discoveries. And Mr. Peters, who appeared concerned for him during his Trial, did now insinuate himself on him to draw somewhat from him : but all was in vain, there being no choice to be made betwixt a glorious death and an infamous life.

#### *The Duke's Execution.*

On the 8th of that month, it being put to the Vote of the House, whether he should be reprieved or not, it was carried in the negative. And he was executed the 9th of March.

The night before his Execution, the Duke, the earl of Norwich, the lord Capel, and sir John Owen (who had all received Sentence of death) were brought into one room. Having spent great part of that night in taking leave of their friends, and in their devotions, the next day the Duke made the following Speech to his friends that attended him, which his brother published from the original he sent him :

" I know you that are here to be true and faithful to me ; I will therefore, in your hearing, say somewhat in order to myself and to my present condition, and give you also this Copy of it ; which, after I am gone, may, perhaps, be thought necessary to be published as the last testimony of my loyalty to my king, for whom I now die, and of my affection to my country, for the pursuance of whose pious and loyal commands I am now to suffer.

" That my Religion hath always been, and still is orthodox, I am confident no man doubts : I shall not therefore need to say much to that particular, only that I am of the true Reformed Protestant Religion, as it is professed in the church of Scotland.

" I take God to witness, that I have been constantly a loyal and faithful subject and servant to his late majesty, in spite of all malice and calumny ; I have had the honour, since my childhood, to attend and be near him till now

of late; and, during all that time, I observed in him as eminent virtues and as little vice as in any man I ever knew; and I dare say he never harboured thought of countenancing Popery in any of his dominions, otherwise than was allowed by the laws of England, and that among all his subjects there could not be found a better Protestant than himself; and surely, also, he was free from having any intent to exercise any tyranny or absolute power over his subjects; and that he hath been so unfortunate, I rather impute the cause of it to the sins of his people, than to his own. For my own part, I do protest never to have swerved from that true allegiance which was due to him, and that hath constantly been paid (to my comfort I speak it) to his progenitors by my ancestors, for many ages, without spot or dishonour; and I hope shall be still, by my successors, to his posterity.

"I do heartily wish well to, and pray for his royal issue, and shall die a true and loyal subject to his eldest son Charles 2, the unquestionable king by right of all his father's kingdoms. I hope, though I do not live to see it, that God's justice and goodness will, in his own time, establish him on the throne of his father, which, I doubt not, some of you will see come to pass; and I am confident, till then, and so long as men, deeply plunged in guilt and self-interest, usurp power and government, these kingdoms will fall short either of peace, or any other permanent happiness.

"I speak from my just affection to the royal race, and much compassion to his majesty's subjects; but not from any malice, anger, or desire of revenge against any, for what I have, or am to suffer, for I forgive all men.

"It is well known what calumnies and aspersions have been thrown upon me by men of several parties and interests, not excepting those who would seem to carry much affection to his late majesty, as if I had expressed disservice or disloyalty to him; the which, how malicious and groundless they were, I appeal to God, who, with my own conscience, clearly beareth witness of my innocency therein, and I shall beg mercy from him to whom I am now to give an account of all my thoughts and actions, as I have still had a faithful and loyal heart to my master.

"It hath been a general complaint, that I persuaded his majesty to pass the act of continuing this parliament. I dispute not whether the doing of it at that time might have been reputed good or bad, but surely it was not I that did persuade it; neither did I at all deal with his majesty for his consent to the Bill of Attainder for taking away the life of the earl of Strafford, whose great parts and affections, it is known, I highly valued: Yet some have been pleased to attribute to me the cause of that concession; but were his majesty now living, I am confident he would publicly clear me in both these, as he hath been pleased many times in private formerly to do.

"And truly I am not conscious to myself,

(though I have been for many years a privy counsellor to him) of ever giving him any advice that tended to other ends, as I conceived, than the good and peace of his majesty and his dominions.

"It hath been rumoured, since my last imprisonment, that I should confess myself to be the greatest instrument under his majesty, by making use of his Scottish Great Seal, for authorizing the war in Ireland; a report so false and simple, as, in my opinion, judicious and honest men will not believe it. And truly, as I am free from having hand therein in any manner of way, so I am of nothing more confident, than that his majesty was also absolutely free thereof, and that he was not in any case a causer or countenance of those Irish troubles.

"I have been often examined touching persons of several qualities within this kingdom, that, as is supposed, did invite into England the late Army from Scotland, or promised assistance after their coming; and of late much persuasion hath been used with me to that purpose, as that upon my discovery thereof depended the only means of my preservation. I will not say that I had any thing to reveal, which would have been satisfactory; but this I desire you to attest to the world, that I have not accused, or said any thing that may reflect on any man of what degree soever, within the king's dominions: And indeed it was so contrary to my conscience, and so derogatory to my honour, that if I had been able, yet should I never have prejudiced any in that nature, though it had been to save me an hundred lives.

"Touching that foul and senseless slander, that I betrayed the Army under my conduct, the care and pains I then took to prevent the loss of it, and the near approach of my suffering for it, will, I suppose, abundantly contradict this aspersion. I was satisfied with the justness and necessity of that Engagement upon the grounds of the Declaration of the Parliament of Scotland, fearing then the sad confusions which have since followed here both in church and state, and particularly the fatal fall of my master, to the preservation of whose person I was by obligation and natural affections as passionately tied, as I could be by duty and allegiance.

"And now I confess I am void of all rancour or displeasure against any, though I am within few hours to die, adjudged by a lawless and arbitrary Court of purpose erected, as is said, to destroy my Master, and some of his servants, and for a great part composed of men mechanic and unfit to be Judges; my Death being decreed right or wrong, as is reported, before ever the Trial begun. And though my Death is no less than Murder, yet I forgive all, and pray to God to do it, and, that my blood be not laid to their charge, or to some powerful and eminent men, who, as is thought, upon some sinister ends, have many months since contrived my destruction, which now is ready to take effect. And though I

have answered to that Court in regard of the justness of my Defence, which I thought would have weighed with them : Yet I never thought, nor do I acknowledge any jurisdiction, or lawful authority in the same, notwithstanding I do with all Christian humility submit to the punishment, which for my other personal sins the Lord hath justly brought upon me. I should have spoken more, yet would not have said so much, but for fear lest either my memory might slip it on the Scaffold, or that the rudeness of some people, by noise or otherwise, might have interrupted me speaking on this subject. So I thank God I am well prepared. God bless you, remember me to all my friends. I know I have been a great sinner, yet through faith I have an assurance that God will forgive me, and have mercy upon me, through the alone suffering and intercession of Jesus Christ my Saviour. Amen."

About nine o'clock the officers called to the Prisoners to prepare to go, and they were carried in sedans, strongly guarded, to sir Robert Cotton's house : When they came to sir Robert Cotton's, three or four officers came from Cromwell, desiring the Duke to make some Discoveries, who should not only be preserved, but be made a great man ; but he refused, as he had formerly done on those occasions, and said, if he had as many lives as hairs on his head, he would lay them all down, rather than redeem them by so base a means. Then they all went to prayers, and they had some excellent preachers waiting on them, and praying with them. Some wine was brought them, and they all drank one to another, and embraced and kissed each other with much tenderness. The Duke was first led to the scaffold, and on the way other officers came from Cromwell, renewing the former offers, if he would make Discoveries, but he rejected them with scorn.

When the Duke came to the Scaffold, perceiving greater silence than he expected, though he had resolved to make no public Speech, yet being invited by the attention he observed, he spoke to the People ; but as he had not premeditated it, no Copy remains but what was printed from the Notes of the hearers, and therefore Dr. Burnet says he only gives us the Heads of it ; as follows :

He addressed himself to the Sheriff, and told him, " He judged it not very necessary for him to speak much, his voice was so weak and low, that few of the crowd that looked on would hear him ; nor was he ever so much in love with speaking, or with any thing he had to say, that he took much delight in it : yet since this was his last, he being by the Divine Providence of Almighty God brought justly to that end for his sins, he would speak a little to the Sheriff, for his voice could not reach others. He was now to suffer as a Traitor to the kingdom of England, a country which he had ever loved equally with his own, not having intended any general prejudice to it, or to any particular per-

son in it : his late actings were the commands of his own country, which he could not disobey. It is true, it had pleased God so to dispose of the Army under his command, that it was ruined, and he for being clothed with a Commission to be General, stood now ready to die. He would not repent what he had pleaded for his own Defence, God was just ; nor would he say any thing of his Sentence, but that he did willingly submit to God's Providence, acknowledging that on many accounts he deserved punishment in this life, as well as in the next, for he confessed himself a great sinner : yet for his comfort he knew there was a God in heaven, who was very merciful, and that his Redeemer did sit at his right hand, and he was confident that he was meditating for him at that very instant, being hopeful, through his all-sufficient merits, to be pardoned all his sins, and to be received into his mercy, trusting only to the free grace of God through Jesus Christ. He declared he had never been tainted in the Religion professed and established in the land, in which he had been bred from his infancy : It was not this or that mode or fancy of religion that was to be built on, but one that was right and sure, and came from God."

Here observing some were taking Notes, he said he did not expect that, or he had digested what he had said into a better method : but desired that what he had said might not be published to his disadvantage, since he had not intended to speak any thing when he came to that place. Then he went on and said, " Many dreadful aspersions had been cast on him, as if his intentions had not been such as he pretended ; but he thanked God he was unjustly blamed : That for the King he had ever loved him, both as he was his king and master, with whom he had been bred many years, and had been his domestic servant, and that there was nothing the Parliament of Scotland declared for the King, that was not really intended by himself ; and as he hazarded his life for him one way, so he now was to lose it another ; and that his design of leading in the Army to England was really that which was published in the Declaration, in so far as concerned the King : He was not then to speak of the rest of the Declaration, which had many other particulars in it ; and for what he said of his duty to the King, there was no reason to suspect him of flattery, or any other end in saying it, (God having now disposed of his majesty) but though he could gain nothing by it, yet he owed the freeing himself of that calumny to truth, by which all men shall gain for ever. There had been many discourses founded on a part of the Scottish Declaration, which mentioned an invitation to come to England, upon which he had been much laboured for discovering the inviters ; but he had and did still remit himself to the Declaration without any other Answer. He was ever willing to serve this nation in any thing was in his power, which was known to many worthy persons in it ; and he would still have continued in those resolutions, had those, in

whose hands the power was then, thought fit to have preserved his life. But since he was thenceforth to be of no more use, all he could do, was to wish the kingdom happiness and peace, and to pray that his blood might be the last should be shed: And though perhaps he had some reluctance within himself at the suffering for this fact, yet he freely forgave all men, and carried no rancour with him to the grave; but did submit to the will of him who created heaven and earth, and himself, a poor sinful creature then speaking before him: He conceived it could contribute to no end for him to speak of State business, of the Government of the kingdom, or things of that nature; his own inclinations had been still for peace. He was never an ill instrument betwixt the king and his people, nor had he acted to the prejudice of the parliament. And as he had not meddled much in those Wars, so he was never wanting in his prayers to Almighty God for his king's happiness, and he earnestly prayed God to direct his majesty (who then reigned) that he might do what should tend to his glory, and the peace and happiness of the kingdoms. He said he was of the established religion, which he had professed in his own country where he was born and bred, but for particular opinions he was not rigid, he knew many godly men had scruples about divers things, wherein he had never concerned himself; nor did difference of opinion (which was never more than at this time) move him. His own was clear. He prayed the Lord to forgive him his sins, as he freely forgave even those against whom he had the greatest grounds of animosity, remembering that prayer, 'Forgive us our trespasses as we forgive them that trespass against us.'

He discovered a great composure by his looks and manner of expression; and when he was desired to change the posture he stood in, since the sun shined full in his face: He answered presently, No, it would not burn it; and he hoped to see a brighter sun than that very speedily.

After the Duke had done speaking, he called for the Executioner, and desired to know how he should fit his body for the blow, and told him his servants would give him satisfaction. Then he called to his servants, and commanded them to remember him kindly to divers of his friends in England, particularly to his mother-in-law, the countess of Denbigh, to whom he had ever paid a filial respect, and to the old countess of Devonshire: He bid them tell her she would no more question his loyalty (which she had done sometimes in railery) since he was now to seal it with his blood: Then he kneeled down and prayed, after which Dr. Sibbald entertained him with some pious discourses; then the Duke prayed a short prayer himself, and with a cheerful countenance embraced the Doctor, and said 'Truly I bless God I do not fear, I have an assurance that is grounded here' (laying his hand on his heart) 'that gives me more true joy

'than ever I had. I pass out of a miserable world to go to an eternal and glorious kingdom; and though I have been a most sinful creature, yet I know God's mercy is infinite; and I bless my God I go with so clear a conscience, that I know not the man I have personally injured.' Then embracing his servants he said to every one of them, 'You have been very faithful to me, the Lord bless you.' He turned next to the Executioner, and after he had observed how he should lay his body, he told him he was to say a short Prayer to his God while he lay all along, and should give a sign by stretching out his right hand, and then he was to do his duty; whom he freely forgave as he did all the world. And then he stretched himself on the ground, and having placed his head right, he lay a little while praying with great appearance of devotion, and then gave the sign: Upon which the Executioner, at one blow, severed his head from his body, which was received in a crimson taffety scarf by two of his Servants, kneeling by him, and was, together with his body, immediately put in a coffin, which was ready on the scaffold, and from thence conveyed to a house in the Meuse, from whence it was, according to the orders he had given, sent down by sea to Scotland, and interred in the Burial-place of his family\*.

*Note,* In the next Article, extracted from Whitelocke's Memorials, are interwoven some particulars of this Case.

"\*Very shortly after the execution of the duke of Hamilton, as if," says Laing, "the northern kingdom were unwilling to be outdone in bloodshed, Huntley, though married to a sister of Argyle who opposed his death, was beheaded in Scotland; a weak though naturally a gallant nobleman, odious to the covenanters from his religion, and formidable from his power." Whitelocke reports "that a minister asking him a little before his Execution, whether he desired absolution from the sentence of Excommunication, which he lay under, he answered, 'he would have nothing to do with him, nor with any that taught such heretical doctrine as he did, to speak to him.'" In his speech to the people, the marquis told them, 'he was sentenced to lose his life for obedience to his sacred sovereign, to which this ought to encourage all men, and not to fright them, and that they should for that cause stoop to a scaffold, as if it were a theatre of honour in this world, as indeed it was a heavenly ladder. That he only craved in his behalf the prayers of those among them that were of this opinion, without desiring the prayers of others whose spirits perchance might be otherwise inclined.'

Huntley's death has been ascribed to the instigation of Argyle, who had possessed himself of his estate. See S Laing's Hist. of Scot. 412, note (3.)

184. Proceedings in the High Court of Justice,\* against the Earl of HOLLAND,† the Earl of NORWICH,‡ Lord CAPEL, and Sir JOHN OWEN, for High Treason: 1 CHARLES II. A. D. 1649. [Rushworth's Coll. Whitelocke's Memorials. Heath's English Martyrs. Clarendon's Hist.]

IN the year 1648, about the time of Hamilton's entering England with the Scots army, considerable efforts on behalf of the king were made in various parts, particularly in North and South Wales, by sir John Owen and others; in Leicestershire by lord Loughborough,

and in Hertfordshire, Essex, Kent, and Surry, under the earl of Norwich, lord Capel, sir Charles Lucas, the earl of Holland and others. All these efforts were overpowered: Sir John Owen was taken prisoner near Carnarvon; The earl of Holland was taken prisoner at St.

\* Clement Walker gives to the third part of his "History of Independency," the title of "The High Court of Justice, or Cromwell's New Slaughter-House in England, with the Authority that constituted and ordained it, Arraigned, Convicted, and Condemned, for Usurpation, Treason, Tyranny, Theft, and Murder." In that work he examines this Court, with considerable ability and some learning, under the following heads: 1. "By what persons and authority this new erected unprecedented Court is constituted? 2. Of what persons it is constituted? 3. The way and manner of their proceedings? What formalities and laws they observe therein? How suitable to the known laws of the land and the Parliament's Declarations, Protestations, and Covenant, they are? 4. To what end this Court is constituted?"—See also in the second part of the History of Independency, p. 123, "Four true and considerable Positions for the Sitting Members, the new Court of Justice, and new Judges, Sheriffs, Officers, Lawyers, Justices and others, to ruminate upon." And in his Additional Postscript to this third Part, he says of it, "This Court (as High as it is) not being constituted a Court of Record, the prisoner, and those that are concerned in him, can have no record to resort to either, 1. To demand a Writ of Error in case of erroneous judgment. 2. To ground a plea of *Auterfois Acquitte*, in case of new question for the same fact. 3. Or to demand an enlargement upon acquittal. Or 4. To demand a writ of conspiracy, against such as have combined to betray the life of an innocent man. Whereby it follows, That this prodigious Court hath power only to condemn and execute; not to acquit and give enlargement, contrary to the nature of all Courts of Judicature, and of justice itself: it is therefore a mere Slaughter-house to commit free-state murders in, without, nay against law and justice: and not a Court of Judicature; to condemn the nocent, and absolve the innocent. And the judges of this court run parallel with their father the Devil; who is ever the minister of God's wrath and fury, *never* of his mercy." In another place (p. 14), he calls it "the second engine appointed to root out all such as are of a different party [from that of Cromwell]—a for-

midable monster upon which no pen that I know of hath yet ventured."

† "The earl of Holland was a younger son of a noble house, and of a very fruitful bed, which divided a numerous issue between two great fathers: the eldest, many sons and daughters to the lord Rich; the younger, of both sexes, to Mountjoy earl of Devonshire. The reputation of his family gave him no great advantage in the world, though his eldest brother was earl of Warwick, and owner of a great fortune; and his younger earl of Newport, of a very plentiful revenue likewise. He, after some time spent in France, betook himself to the war in Holland, which he intended to have made his profession; where, after he had made two or three campaigns, according to the custom of the English volunteers, he came in the leisure of the winter to visit his friends in England, and the court, that shined then in the plenty and bounty of king James; and about the time of the infancy of the duke of Buckingham's favours, to whom he grew in a short time very acceptable. But his friendship was more entire to the earl of Carlisle, who was more of his nature, and humour, and had a generosity more applicable at that time to his fortune and his ends. And it was thought by many who stood within view, that for some years he supported himself upon the familiarity, and friendship of the other; which continued mutually between them very many years, with little interruption to their death. He was a very handsome man, of a lovely and winning presence, and gentle conversation; by which he got so easy an admission into the court, and grace of king James, that he gave over the thought of further intending the life of a soldier. He took all the ways he could to endear himself to the duke, and to his confidence, and wisely declined the receiving any grace or favour, but as his donation; above all, avoided the suspicion that the king had any kindness for him, upon any account but of the duke, whose creature he desired to be esteemed, though the earl of Carlisle's friend. And he prospered so well in that pretence, that the king scarce made more haste to advance the duke, than the duke did to promote the other.—He first preferred him to a wife, the daughter and heir of Cope, by

Neot's; The earl of Norwich, lord Capel, lord Loughbrough, sir George Lisle, sir Charles Lucas, and others, threw themselves into Colchester, where they were besieged, and suffered extreme hardships. Many details of the history of this siege are to be found in Rushworth and Whitelocke, the former of whom gives the following Account of the final events of it. It will be seen, that questions arose out of the grant of Quarter, for which reason the Articles of Surrender are here inserted.

Aug. 25th, 1648. From the League before Colchester we understood of some Overtures made yesterday by Goring and the rest for the Surrender of the town; but not accepted of, as you may see by the Papers following:

"My lord: Upon a solemn debate of the Officers here, upon occasion of your former letters of demanding the Persons of all the officers here, above the quality of a lieutenant, to render themselves to mercy; it was unanimously resolved by them, not to yield to the mercy of any other, but that of God alone: And that all means may be on our part used, for the farther avoiding of the effusion of more English blood, we have sent you here inclosed the lowest conditions which in substance we can receive with honour, conceiving the like were never refused to any, far lower reduced than we can yet yield ourselves to be: But if there be any doubt in the form of words, or circumstances, we will, if you like of it, send one gentleman, or more, that by a conference

whom he had a good fortune; and amongst other things, the manor and seat of Kensington, of which he was shortly after made baron. And he had quickly so entire a confidence in him, that the duke prevailed with the king to put him about his son the prince of Wales, and to be a gentleman of his bedchamber, before the duke himself had reason to promise himself any proportion of his highness's grace, and protection. He was then made earl of Holland, Captain of the Guard, Knight of the Garter, and of the Privy-Council; sent the first Ambassador into France to treat the marriage with the Queen, or rather privately to treat about the marriage before he was ambassador. And when the duke went to the isle of Ree, he trusted the earl of Holland with the command of that army with which he was to be recruited, and assisted.—In this confidence, and in this posture he was left by the duke when he was killed; and having the advantage of the queen's good opinion, and favour (which the duke neither had, nor cared for) he made all possible approaches towards the obtaining his trust, and succeeding him in his power; or rather that the queen might have solely that power, and he only be subservient to her; and upon this account, he made a continual war upon the earl of Portland the treasurer, and all others who were not gracious to the queen, or desired not the increase of her authority. And in this state, and under this protection, he received

with the like number appointed by you, may clear all scruples, and agree of the time of performance. Your Lordships Servants, NORWICH, ARTHUR CAPELL, CHARLES LUCAS." Colchester, Aug. 24, 1648.

The ARTICLES were as followeth;

"That the Town and Castle of Colchester, and all places of defence whatsoever in the same, with all the ordnance, arms, ammunition and provisions of war, all magazines and stores thereunto belonging, excepting what is allowed in the ensuing Articles, shall be delivered to the general, the lord Fairfax, or whom he shall appoint, without wilful spoil or embezzlement.—That the earl of Norwich, lord Capell, sir Charles Lucas, the lord Loughborough, and all the rest of the officers, gentlemen, and soldiers, both of horse and foot, shall march out of this town of Colchester, with their horses and arms, a mile without the town, and then all to render up their horses and arms, excepting as followeth,—That the earl of Norwich, the lord Capell, sir Charles Lucas, and the lord Loughborough, shall march away from thence with all their horses, arms, and other equipage, particularly belonging to them.—That all other general-officers, colonels, lieutenant-colonels, majors and captains of horse and foot, lieutenants and cornets of horse, and all gentlemen of quality, shall march away with two horses apiece, and one servant; themselves to march with their arms, their servants with their swords only, and their masters baggage; and all other officers to

every day new obligations from the king, and great bounties, and continued to flourish above any man in the court, whilst the weather was fair: but the storm did no sooner arise, but he changed so much, and declined so fast from the honour he was thought to be master of, that he fell into that condition, which there will be hereafter too much cause to mention, and to enlarge upon." Clarendon.

In another place, Clarendon, relating the circumstances of the departure of King Charles the First from Westminster, in the year 1649, expresses himself with much indignation of the refusal of lord Holland (though Groom of the Stole) to accompany his master, and of his prevailing on lord Essex (who was Lord Chamberlain) also to remain with the Parliament.

Mr. Burke, in his "Reflections on the Revolution in France," particularises this lord Holland, as one of several persons who by themselves or their families had brought an odium on the throne by the prodigal dispensation of its bounties towards them, who afterwards joined in the rebellion arising from the discontents, of which they were themselves the cause; men who helped to subvert that throne to which they owed some of them their existence, others all that power which they employed to ruin their benefactors.

† Charles the First had, in 1628, created him a peer, by the title of lord Goring, and, in 1644, advanced him to the earldom of Norwich.

march with their swords only.—That all persons whatsoever included in these Articles, shall have passes to go into their several countries and places of abode; and to be free from all violence and plunder in their march.—That all included in these Articles, who shall desire it, shall have passes granted them freely to pass beyond the seas within a month after their marching out, they only engaging themselves in mean time to act nothing prejudicial to the parliament now sitting at Westminster.—That all private soldiers shall be provided for in their passage, for Free-Quarter in their march homewards, lying but one night in a place. That convenient provision be made for all hurt and sick soldiers who shall be left in Colchester, untill they be recovered, and then passes to be given them, as before-mentioned, according to their several qualities.—That all the inhabitants of this town of Colchester be free, both in goods and persons, from any violence, without distinction. That all persons who have been taken prisoners on either side, shall have the benefit of these articles.

The General's Answer.

“When I looked upon your condition to be far better than now it is, I then offered such terms as were thought suitable to your condition; but you now being in a worse posture, both in relation to yourselves within, and in relation to any expectation of relief from without, it is not to be expected from me, that your Conditions should be better: Wherefore I am still resolved not to grant any such terms as are now demanded by you. Your Lordships’ Servant,  
THO. FAIRFAX.”

Aug. 14. 1648.

August 26. From the League before Colchester came farther, “That this day about twelve of the clock, the Enemy sent out a drum, with Mr. Bernardiston, one of our Committee, and col. Tuke, one of their party; seeing no hope to treat upon the Articles, they sent out to desire to treat upon what was offered formerly by his Excellency, viz. Concerning the explanation of the words, ‘To submit to mercy;’ How far that mercy might extend; and concerning the inferior officers and soldiers, and townsmen. His Excellency called a very full Council of War, and upon debate it was resolved: ‘That in regard the inferior officers and soldiers had slipt their opportunity, that now they should have only ‘fair quarter:’ and that a Treaty be admitted, provided the Committee under restraint be forthwith released, upon circumstances necessary for clearing, and orderly performance of the fair quarter now offered; Also, to treat as to the securing the town from plunder, &c. And that the lords, general officers, and captains &c. be rendered up to mercy.—This night about eight, col. Tuke returned with an Answer in substance as before; and all the whole Council of War sate this afternoon; the private soldiers on both sides held a Treaty amongst themselves; and this occasioned the

enemy to send out so hastily to treat upon terms of mercy; for they said, That their private soldiers amongst themselves had agreed to deliver them up.—The last night the officers did give the soldiers sack, burnt claret, raisins, prunes, and good words, for to join with them to break through; they prepared poles and boards to break over North Bridge, which way they did intend to escape; and when they were all drawn out into the town, the soldiers did agree amongst themselves, that they would not condescend to their going out, for they knew then they would break through themselves, and leave the soldiers to the mercy of our soldiers; and some of the soldiers got to the gates, and said, ‘That they would kill their Officers if they offered to stir out.’ In this high distemper of mutiny the enemy now are, and we doubt not of conclusion concerning the Surrender of the town to-morrow, which we hope to have upon Monday next, or Tuesday at farthest.”

Farther thus, “You may add the Surrender of Colchester; the business is as good as done; the three generals have, by a Letter under their hands, submitted themselves, with all the officers and soldiers, to mercy; our Committee are come to the General safe; sir William Compton, sir Abraham Shipman, col. Hammon, col. Tuke, and col. Ayloffe, came out to treat about circumstances; 300 of our soldiers are in the town.”

Colchester, 27 Aug. 1648.

August 28. From Colchester, by an express to the Speaker of the House of Commons, came as followeth,

“Sir; the last night, about ten o’clock, the Articles were signed by the Commissioners on both sides, which were to this purpose: That all horse with furniture should be delivered this day by ten o’clock: That all private soldiers and officers, under captains, shall have fair quarter, and render themselves prisoners: That the lords, and all superior officers and gentlemen be drawn together in the King’s-Head Inn, with their cloaths and baggage, by eleven o’clock, and there to render themselves to the mercy of the Lord General: That the enemies guards be drawn off, and the guards of this army appointed in their stead: That all ordnances, ammunition, waggons, &c. be delivered to the comptroller: That the sick and wounded be provided for with accommodation, until recovered.—And this afternoon col. Rainsborough’s regiment, and another regiment, entered the town, and accordingly the Articles in all things else performed; you will very suddenly receive an account from his Excellency, of the particulars of this business; as also a List of what persons of quality, officers and commanders, are at mercy; the number of ordnance, arms, and quantity of ammunition. This morning we rode round about the wall of the town, and find it to be a very strong place in all parts of it; where it was weakest there they made strong works, and strengthened it

with earth; it was a sad spectacle to see so many fair houses burnt to ashes, and so many inhabitants made so sickly and weak, with living upon horses and dogs; many glad to eat the very draught and grains for preservation of life. I remain your humble servant  
Colchester, Aug. 28, 1648. J. RUSHWORTH.

August 29. We had farther from Colchester, "That the town was surrendered yesterday according to the Articles, all prisoners at mercy: the town preserved from plunder, paying 14,000*l*. That afternoon a council of war was called, at which it was resolved, That sir Charles Lucas, sir George Lisle, and sir Ber-

\* "Sir Bernard Gascoigne was a gentleman of Florence; and had served the king in the War, and afterwards remained in London till the unhappy adventure of Colchester, and then accompanied his friends thither; and had only English enough to make himself understood, that he desired a pen and ink and paper, that he might write a letter to his prince the Great Duke, that his highness might know in what manner he lost his life, to the end his heirs might possess his estate. The officer that attended the execution thought fit to acquaint the General and Council, without which he durst not allow him pen and ink, which he thought he might reasonably demand: When they were informed of it, they thought it a matter worthy some consideration; they had chosen him out of the list for his quality, conceiving him to be an English gentleman; and preferred him for being a knight, that they might sacrifice three of that rank.—This delay brought the news of this bloody resolution to the Prisoners in the town; who were infinitely afflicted with it; and the lord Capel prevailed with an officer or soldier, of their guard, to carry a letter, signed by the chief persons and officers, and in the name of the rest, to the General; in which they took notice of that judgment, and desired him 'either to forbear the execution of it, or that they might all, who were equally guilty with those three, undergo the same sentence with them. The letter was delivered, but had no other effect than the sending to the officer to dispatch his Order, reserving the Italian to the last. Sir Charles Lucas was their first work, who fell dead; upon which sir George Lisle ran to him, embraced him, and kissed him; and then stood up, and looked those who were to execute him in the face; and, thinking they stood at too great a distance, spake to them to come nearer; to which one of them said, 'I'll warrant you, sir, we'll hit you:' he answered smiling, 'Friends, I have been nearer you, when you have missed me.' Thereupon, they all fired upon him, and did their work home, so that he fell down dead of many wounds without speaking a word. Sir Bernard Gascoigne had his doublet off, and expected the next turn; but the officer told him 'he had order to carry him back to his friends;' which at that time was

very indifferent to him. The Council of War had considered, that if they should in this manner have taken the life of a foreigner, who seemed to be a person of quality, their friends or children who should visit Italy, might pay dear for many generations; and therefore they commanded the officer, 'when the other two should be dead, to carry him back again to the other prisoners.' The two who were thus murdered, were men of great name and esteem in the War; the one being held as good a commander of horse, and the other of foot, as the nation had; but of very different tempers and humours. Lucas was the younger brother of the lord Lucas, and his heir both to the honour and estate, and had a present fortune of his own. He had been bred in the Low Countries under the prince of Orange, and always amongst the horse. He had little conversation in that court, where great civility was practised, and learned. He was very brave in his person, and in a day of battle a gallant man to look upon, and follow; but at all other times and places, of a nature scarce to be lived with, of no good understanding, of a rough and proud humour, and very morose conversation; yet they all desired to accompany him in his death. Lisle was a gentleman who had had the same education with the other, and at the same time an officer of foot; had all the courage of the other, and led his men to a battle with such an alacrity, that no man was ever better followed, his soldiers never forsaking him; and the party which he commanded, never left any thing undone which he led them upon. But then, to his fierceness of courage he had the softest and most gentle nature imaginable; was kind to all, and beloved of all, and without a capacity to have an enemy.—The manner of taking the lives of these worthy men was new, and without example, and concluded by most men to be very barbarous; and was generally imputed to Ireton, who swayed the General, and was upon all occasions of an unmerciful and bloody nature. As soon as this bloody sacrifice was ended, Fairfax, with the chief officers, went to the town house to visit the prisoners; and the General (who was an ill orator on the most plausible occasion) applied with his civility to the earl of Norwich, and the lord Capel; and, seeming in some de-

sent him from the Lord General; by virtue whereof he was set at liberty, and continues to this day at the Court at Whitehall.\*

Aug. 31. A letter was brought to both Houses from his excellency, with a List of the Prisoners of Colchester, by Mr. Gilbert Mabbot, agent for his Excellency; and the House spent some time in debate, concerning col. Farr, lieutenant-col. to the earl of Warwick, who engaged 1,000 of the Essex trained-bands to join with the enemy: The House ordered hereupon, "That it should be left to his Excellency the lord general, to execute the said col. Farr in such manner as sir Charles Lucas and sir George Lisle."

The express this day from his Excellency the lord Fairfax to both Houses, of the Surrender of Colchester, was as followeth;

For the Right Honourable, Edward Earl of Manchester, Speaker of the House of Peers: *pro tempore*.

"My Lord; I have herewith sent you the Articles, with the Explanations annexed; upon which it hath pleased God in his best time to deliver the Town of Colchester, and the enemy therein, into our hands, without farther bloodshed; saving that, for some satisfaction to military justice, and in part of revenge for the innocent blood they have caused to be

spilt, and the trouble, damage, and mischief, they have brought upon the town, this country, and the kingdom; I have, with the advice of a Council of War of the chief officers, both of the country forces and the army, caused two of them who were rendered at mercy, to be shot to death before any of them had quarter assured them. The persons pitched upon for this example were, sir Charles Lucas and sir George Lisle; in whose military execution, I hope your lordships will not find cause to think your honour or justice prejudiced. As for the lord Goring, lord Capel, and the rest of the persons rendered to mercy, and now assured of quarter, of whose names I have sent your lordships a particular List; I do hereby render unto the Parliament's judgment, for farther public justice and mercy to be used, as you shall see cause. I desire God may have the glory of his multiplied mercies towards you and the kingdom in this kind: and in the condition of instruments as to the service here, the Officers and Soldiers of Essex and Suffolk, who in this time of so dangerous defection have adhered constant to yours and the kingdom's interest, for their faithful demeanor, and patient endurance, in the hardship of this service, are not to be forgotten. Your lordship's most humble servant,

*Hith, Aug. 29, 1648. THO. FAIRFAX."*

gree to excuse the having done that, which he said 'the military justice required,' he told them, 'that all the lives of the rest were safe; and that they should be well treated, and disposed of as the Parliament should direct.' The lord Capel had not so soon digested this so late barbarous proceeding, as to receive the visit of those who caused it, with such a return as his condition might have prompted to him; but said, 'that they should do well to finish their work, and execute the same rigor to the rest;' upon which there were two or three such sharp and bitter replies between him and Ireton, that cost him his life in a few months after. When the General had given notice to the parliament of his proceedings, he received order to send the earl of Norwich and the lord Capel to Windsor Castle; where they had afterwards the society of duke Hamilton, to lament each others misfortunes; and after some time they two were sent to the Tower." Clarendon.

\* "The siege of Colchester terminated in a manner no less unfortunate than Hamilton's engagement, for the royal cause. After suffering the utmost extremity of famine, after feeding on the vilest aliments; the garrison desired at last, to capitulate. Fairfax required them to surrender at mercy; and he gave such an explanation of these terms, as to reserve to himself power, if he pleased, to put them all instantly to the sword. The officers endeavoured, though in vain, to persuade the soldiers, by making a furious assault, to break through, or at least, to sell their lives as dear as possible. They were obliged to accept of the conditions offered; and Fairfax, instigated by

Ireton, to whom Cromwell, in his absence, had consigned over the government of the passive general, seized sir Charles Lucas and sir George Lisle, and resolved to make them instant sacrifices to military justice. This unusual piece of severity was loudly exclaimed against by all the prisoners. Lord Capel, fearless of danger, reproached Ireton with it; and challenged him, as they were all engaged in the same honourable cause, to exercise the same impartial vengeance on all of them. Lucas was first shot, and he gave, himself, orders to fire, with the same alacrity, as if he had commanded a platoon of his own soldiers. Lisle instantly ran and kissed the dead body, and then cheerfully presented himself to a like fate. Thinking that the soldiers, destined for his execution, stood at too great a distance, he called to them to come nearer: one of them replied, 'I'll warrant you, Sir, we'll hit you:' he answered smiling, 'Friends, I have been nearer you when you have missed me.' Thus perished this generous spirit, not less beloved for his modesty and humanity, than esteemed for his courage and military conduct. Soon after, a gentleman, appearing in the King's presence, clothed in mourning for sir Charles Lucas; that humane prince, suddenly recollecting the hard fate of his friends, paid them a tribute, which none of his own unparalleled misfortunes ever extorted from him: he dissolved into a flood of tears." Hume.

† Yet from a subsequent passage in Rushworth, it seems doubtful whether he were so executed.

ARTICLES agreed upon the 27th of August 1648, by and between the Commissioners of His Excellency the Lord General Fairfax, on the one part, and the Commissioners of the Earl of Norwich, Lord Capel, Sir Charles Lucas, on the other part; for and concerning the Rendition of the Town and Garrison of Colchester, which follows:

"That all the horses belonging to the officers, soldiers, and gentlemen, engaged in Colchester, with saddles and bridles to them, shall be brought into St. Mary's Church-yard, by nine of the clock to morrow morning; and the spare saddles and bridles into that Church; and delivered, without wilful spoil, to such as the Lord General shall appoint to take charge of them.—2. That all the arms, colours, and drums, belonging to any of the persons in Colchester abovementioned, shall be brought into St. James's Church, by ten of the clock to morrow morning, and delivered, without wilful spoil or imbezement, to such as the lord general shall appoint to take charge of them.—3. That all private soldiers and officers under captains, shall be drawn together into the Fryars yard, adjoining to the East-gate, by ten of the clock to morrow morning, with their cloaths and baggage; their persons to be rendered into the custody of such, as the lord general shall appoint to take charge of them; and that they shall have fair quarter, according to the explanation made, in the Answer to the first Quere of the commissioners from Colchester; which is hereunto annexed.—4. That the lords, and all captains, and superior officers, and gentlemen of quality, engaged in Colchester, shall be drawn together to the King's-head, with their cloaths and baggage, by eleven of the clock to morrow morning, and there to render themselves to the mercy of my lord general, or into the hands of such, as he shall appoint to take charge of them; and that a list of the names of all the general officers, and field officers, now in command in the town, be sent out to the lord general, by nine of the clock in the morning.—5. That all the guards within the town of Colchester shall be withdrawn from the line, forts, and other places, by eight of the clock to morrow morning: and such as the lord general shall appoint, shall thereupon come into their rooms.—6. That all the ammunition shall be preserved in the places where it lies, to be delivered to the comptroller of his excellency's train, by ten of the clock to morrow morning; and all the waggons belonging to the soldiery, or persons engaged with the harnesses belonging thereunto, shall be brought to some convenient place near the ammunition, to be delivered to the same person, by the same hour.—7. That such as are wounded and sick in the town, shall be there kept and provided for, with accommodation requisite for men in their condition; and not removed thence, until they be recovered, or able without prejudice to

their healths to remove; and shall have such chururgeons allowed to look to them, as are now in the town.—8. That all Ordnance in the town, with their appurtenances, shall without wilful spoil be left at the several platforms, or places, where they are now planted, and so delivered, to his excellency's guard that shall take the charge of those places respectively.—9. That from henceforth, there shall be a cessation of arms on both parts; but the forces within the town to keep their own guards, and the lord general's to keep theirs, until they shall be removed, according to the articles foregoing.

"Signed by us the commissioners on the behalf of his excellency the lord Fairfax, Tho. Honeywood, Hen. Ireton, Tho. Rainsborough, Edw. Whaley, Will. Bloys, Bram. Gurdon, John Sparrow, Isaac Ewer, Tho. Cooke, G. Barnardiston.

"Signed by us the commissioners on the behalf of the earl of Norwich, the lord Capel, and sir Charles Lucas, Will. Compton, Ab. Shipman, Edw. Hammond, S. Tuke, Will. Ayloff." Hieth, Aug. 27, 1648.

Queries propounded by the Commissioners from Colchester, to the Commissioners of his excellency the lord Fairfax, upon the Conditions sent into the town. I. What is meant by Fair Quarter? II. What by rendering to Mercy?

To the first, "By fair Quarter we understand, That with Quarter for their lives they shall be free from wounding or beating, shall enjoy warm cloaths to cover them and keep them warm; shall be maintained with victuals fit for prisoners, while they shall be kept prisoners." To the second, "By rendering to Mercy we understand; That they be rendered, or render themselves to the Lord General, or whom he shall appoint, without certain assurance of Quarter; so as the Lord General may be free to put some immediately to the sword, if he see cause; although his Excellency intends chiefly, and for the generality of those under that condition, to surrender them to the mercy of the Parliament in general. There hath been large experience, neither hath his excellency given cause to doubt of his civility to such as he shall retain prisoners; although by their being rendered to mercy he stands not engaged thereby."

Upon return of these Answers, the Commissioners from Colchester propounded these two farther Queries: I. Whether those that were surrendered to mercy, should enjoy their wearing cloaths, as well those on their backs, as what other change they have? II. Whether the noblemen and officers shall have use of their own horses, to the places where they shall be confined?

To which it was answered by his Excellency's Commissioners: To the first, it is intended, That those who shall be rendered and received to mercy, shall enjoy the wearing cloaths on their backs; but for more, the general will not be engaged. To the second, it is expected,

in case of Surrender upon Treaty, That all horses as well as arms be delivered up; and for circumstance thereof, there is to be an article; yet for the gentlemen and officers under this condition in question, when any shall be removed to the place of confinement, his excellency will take care for horses to carry them with respect to their qualities; but for allowing their own horses, he will not be engaged."

A List of the Prisoners taken at the Surrender of Colchester, Aug. 28, 1648.

The earl of Norwich, the lord Capel, the lord Loughborough, sir Charles Lucas, sir William Compton colonel, Sir George Lisle, sir Bernard Gascoyne, sir Ab. Shipman, sir John Watts, sir Lodowic Dyer, sir Henry Appleton, sir Dennard Strutt, sir Hugh Oriley, sir Richard Mauliverer, made an escape but taken again; quarter-master-general Carter, col. Gilburne, col. Farr, escaped and taken; col. Hammond, col. Chester, col. Till, col. Heath, col. Tuke, col. Ayliffe, col. Sawor, 8 lieut. colonels, 9 majors, 30 captains, the marshal-general, commissary-general, Francis Lovelace master of the ordnance waggon; master-general Graviden, servants attending upon the lords; gentlemen 65, lieutenants 72, ensigns and cornets 69, serjeants 183. private soldiers 3067.

#### WHITELOCK'S ACCOUNT OF THESE PROCEEDINGS.

July 26, 1648. Sir John Owen was sent to Wind-or castle, upon a charge of High Treason and Murder against him, for the business of North Wales.

Aug. 29. Letters from Colchester, that the town was surrendered according to Articles, all prisoners at mercy, the town preserved from plunder, paying 14,000*l*. That by the resolution of a Council of War, sir Charles Lucas, sir George L'Isle, and sir Marmaduke Gascoigne a Papist, were to be shot to death. That the two first were executed, and the last respited. That sir Charles Lucas urged this was to be without precedent, but a Parliament soldier standing by, told him 'that he had put 'to death with his own hand some of the Parliament soldiers in cold blood;' at which he was dismayed, but took better courage afterwards before he died. That sir George L'Isle kissed his dead friend, and then after much expostulation, and discourse, first with the general his chaplain, then, by his own desire, with one of the lord Norwich his chaplains, and some private prayers with him, sir George died, both he and sir Charles Lucas with very much courage.

Aug. 31. Letter from the General of the particulars of the Surrender of Colchester, and a copy of the Articles, with the explanations upon them. "That for some satisfaction to Military Justice, and in part of revenge for the innocent blood they had caused to be spilt, and the trouble, damage and mischiefs, they

had brought upon that Town, that county and kingdom, He had with the advice of a Council of War, of the chief officers both of the county forces, and the army, caused two of them who were rendered to mercy, sir Charles Lucas and sir George L'Isle, to be shot to death, before any of them had quarter assured them, and hopes the parliament will not find cause, in the military execution of these two persons, to think their own honour or justice prejudiced. That as for the lord Goring, lord Capel, and the rest of the persons rendered to mercy, and now assured of quarter, whose names he sent in a List, he did render to the Parliament's judgment for public justice and mercy to be used as they should see cause; he desires that God may have the glory of his multiplied mercies."

Sept. 25. The House of Commons ordered an Impeachment against the lord Goring, and an Act of Attainder against the lord Capel to be brought in.

Oct. 21. The Lord-General explained to the house of commons his former Letter concerning the Quarter given to the lord Goring and lord Capel, "That it did not extend to any other but the military power, and that they were notwithstanding liable to Trial and Judgment by the Civil Power; otherwise any who was treacherous, or had revolted, might get quarter from a private soldier, and so not be further questionable." With divers other reasons given by him to the same purpose.

Nov. 10. The House of Commons voted That the lords Goring, Capel, Loughborough, the earl of Holland, major general Laugherne, and sir John Owen, shall be banished out of the kingdom.

January 31, 1649. Sir Lewis Dives escaped the last night, and Mr. Holder the Prince's Agent, escaped through the house of office in Whitehall standing over the Thames. The escapes of these persons put the house in debate, of bringing Hamilton, the earl of Holland, Laugherne, Poyer, Powell, and other chief Delinquents to a speedy trial.—They appointed a Committee to bring in an Act, for constituting a Court for the Trial of these persons, and ordered the earl of Holland to be forthwith removed to London.

Feb. 1. Voted, That duke Hamilton, the earl of Holland, lord Goring, lord Capel, and colonel Owen, shall be the next persons to be proceeded against for justice.

After this the lord Capel by a desperate attempt, escaped this evening out of the Tower over the moat, and warrants were sent out, and 100*l*. promised to any that should take him.

The High Court met to prepare matters for the Trial of duke Hamilton, the earl of Holland and others.

Feb. 2. Divers Members of the Parliament, of the Army, of the City, and private Gentlemen, in all to the number of 60, whereof 15 to

be of the Quorum, were by Act made a High Court of Justice for Trial of duke Hamilton, the earl of Holland, and others.

Feb. 3. Two watermen of London discovered and apprehended the lord Capel in a house at Lambeth: the house gave 40*l.* to the watermen.

Feb. 5. The High Court of Justice sat in the Painted Chamber, and elected the Lord President, and Officers, as were before, they agreed upon a Proclamation: 'That they had adjourned themselves till to-morrow morning in the Painted Chamber, and such who had any evidence to give against the earl of Holland, earl of Cambridge, lord Goring, lord Capel, and sir John Owen, or any of them, were to repair thither, where they might be heard.'

Feb. 6. The High Court of Justice sat, receiving Witnesses and preparing the Charges against the five persons to be tried. The earl of Holland sent up by post, that he was dangerously sick at Warwick-castle.

Feb. 9. The High Court of Justice sat in Westminster-hall, about fifty of the members present, the earl of Cambridge, lord Goring, lord Capel, and sir John Owen were brought before them, and the President made a Speech to them, of the occasion of their coming thither, to trial for Treason, and other high crimes, after which, they were all commanded to withdraw, except the earl of Cambridge.

Then Mr. Steel, Attorney General for the Commonwealth, set forth the notoriety of the facts of the Prisoner at the bar, by his invading the kingdom, committing many murders, and rapines, and all under pretence of the covenant; that as the war was called *Hypocritarum bellum*, so he might be called *Hypocritarius Princeps*. He desired the Charge might be read, and that the Earl might make answer to it.

After the Charge read, the Earl of Cambridge pleaded, That he was of another nation, and what he did, was as a servant to that kingdom, and not as a contriver of it, neither was he ever naturalized earl of Cambridge that he knew of, that he was a prisoner of war, and had Articles given him.

The Court caused the Act to be read for Naturalization of his father, and consequently of him, being his heir.

The lord Goring was next brought to the bar, and his Charge being read to him, he pleaded Not Guilty, and was dismissed, behaving himself with great respect to the Court.

The lord Capel pleaded, 'That he was a prisoner to the Lord General, and had conditions given him, and his life promised him, that if all the magistrates in Christendom, were combined together, they could not call him in question.' He never minded nor looked upon the Court, but upon the people on all sides, and with an austere countenance.

Sir John Owen pleaded Not Guilty.

The next day the earl of Cambridge being

brought to the bar, Mr. Steel moved, That he might answer his Charge, which the President required him to do.

The Earl desired time to put things into a method, and that he might send to major general Lambert, by whom he had Articles given, and to Scotland from whence he received his commission.

The Court gave him two days to answer, and upon his motion for Counsel, he had liberty to name them, which he said he could not, not knowing any one counsellor in England.

The lord Capel brought in and demanded to plead in chief to his Charge, did again insist upon the Articles of Colchester, whereby he said, 'He had fair quarter given him, and that all the gowns in the world had nothing to do with him.'

Feb. 12. A certificate of the doctor, and apothecary of the earl of Holland, 'That he could not with safety of his life be removed up to London;' and a Petition of his lady for favour to him, referred to the High Court of Justice to send for him if they should think fit.

Feb. 13. The High Court of Justice sat, and the lord Capel being brought into the Court, the Attorney General moved, That the Prisoner might make good his plea.

The President told the lord Capel, That he had put in a Plea, concerning Articles, for proof whereof, the Lord General was by order of the Court, there present; that he had liberty to ask any thing of him, if not, then the counsel of the Commonwealth were to offer what they could in proof of it.

Then the Attorney General went on, and produced the General's Letter to the Parliament, upon the rendition of Colchester, and the Articles, and the explanation of them, whereby, and upon the testimony of the Lord General and general Ireton, col. Whaley and col. Barksted, all present by order of the Court, it appeared, 'That the lord Capel was to have fair quarter for his life,' which was explained to be, 'a freedom from any execution of the sword, but not any protection from the judicial proceedings of a Civil Court;' and mercy was explained to be only 'from the promiscuous execution of the sword, but that he might be tried by a Council of War.' But of this learning, I hope none of this nation will have use hereafter.

It was clearly proved that the Articles were only to free him from the present power of the sword to take away his life, and colonel Barksted swore, 'That, he told him, the day after the Articles, that he believed, the Parliament would proceed against them that were taken at Colchester, as Traitors.'

The Counsel moved for Judgment against the lord Capel, that he should be hanged, drawn, and quartered, at which he seemed to startle; and after a short Speech to the Court, he concluded, 'That however he was dealt with here, he hoped for a better resurrection hereafter.'

Then the earl of Cambridge was brought to

the bar, and required to make good his Plea: he thanked the Court for the time they had given, which he said was so short, that he could not be provided. Upon his desire there were assigned to him for counsel, Mr. Chure, Mr. Hales, Mr. Parsons, and Dr. Walker. He desired leave to send to Scotland, and further time; it was answered, "That it was for prisoners to prepare their proofs against the Trial, he having been in prison so long;" he replied, "That during his six months imprisonment, he never sent about any private business but only to get monies to maintain him, and prayed the mercy of the Court, that if they would spare him, he might be useful; and that he was sorry for what he had done." He had two days time longer given to him, to prepare for his defence.

Feb. 15. The High Court of Justice sat, and the earl of Cambridge moved the Court for further time, and new Council, in regard that those formerly assigned to him for Council, refused to plead for him, which was granted to him.

Feb. 16. The High Court of Justice sat, and the lord Goring was brought to the bar, Mr. Coke, Solicitor General, set forth the heinousness of his Crimes at Colchester, in Kent, Essex, &c.

He said, 'he could not deny the matter of fact, in much of them, but should clear himself of some particulars.'

Divers Witnesses were produced *vivâ voce*, who proved the Death of several of the Parliament Party before Colchester, the shooting of poisoned bullets, boiled in copperas, from the town, the cruel usage of the prisoners in Colchester, the lord Goring's reviling them, calling them 'Rebellious rogues,' the burning of 600 houses at Colchester, and many other particulars.

The lord Goring by way of Defence made a Narrative of his Proceedings since his last coming into England, acknowledged his receiving a Commission from the Prince, and his giving Commissions to others. That what he did was out of a good intention for peace and accommodation; That Treason not being in the intention, he could not be guilty of it; that he intended not to raise Forces against the Parliament, he pleaded his peerage, and the Articles of Colchester, by which quarter was given him.

To this the Counsel for the Commonwealth replied, 'That a man's actions did best expound his intentions; that the lord Goring's actions spake him guilty of Murder, Treason, &c. that to his peerage, the power by which the Court sat, was an answer. That for the Articles of Colchester, though he had at first waved them, by pleading not guilty, yet he should have as full a benefit of them, as the lord Capel, who had largely pleaded for them.'

Against sir John Owen, Witnesses testified the Death of the high Sheriff of Caernarvon and others: sir John alledged, 'That what he did, was to free himself from violence and plunder,' but it was proved that he was in the first war,

had the Articles of Conway, upon which he was admitted to compound, took the Covenant, and negative oath, and yet engaged a second time.

The earl of Holland was removed from Warwick castle to London.

Feb. 17. The High Court of Justice sat, and witnesses proved the escape of the lord Capel out of the Tower. He pleaded, That he did not escape as he was a Prisoner of War, but as he was sent to the Tower in another condition.

The earl of Cambridge urged, That the Counsel assigned to him were not ready, for want of longer time, and held it not proper for them to plead in matter of law till the fact were first proved.

The Court declared that he had been often moved to make his Defence; whereupon he proceeded in it, produced his Commissions from the parliament, to command all the forces of that kingdom, and the order of the Committee of Estates there, for him to advance into England, then the large Declaration from Scotland.

He pleaded the ends thereof being for his majesty's honour, the settling of Religion and the Covenant; he also pleaded the Articles agreed unto by major-general Lambert, when he yielded himself Prisoner, whereby he was assured by him of quarter and life; to prove which, he produced the lord Grey, colonel Lilburn, and Mr. Peters, for Witnesses.

Concerning the point of Naturalization, he pleaded, That his father, being naturalized, could not make him a subject of England, no more than the son of an Englishman, born in any foreign parts, was entitled thereby to any inheritance here; that he had a Petition and Bill prepared for his Naturalization, but it passed not.

Colonel Whichcot the Governor, and the marshal of Windsor Castle, proved the Earl's escape, after he had passed his word to the governor to be a true Prisoner. The Earl earnestly denied this, and offered upon it a challenge to the governor, were he not in his present capacity; but it was left to the judgment of the Court.

Feb. 19. The High Court of Justice sat, and Witnesses proved, That the earl of Cambridge was prisoner to the lord Grey, before the Articles with major-general Lambert were concluded. Letters produced, signed with his own hand, to sir Marmaduke Langdale, touching the carrying on of the design in England, and passages touching his friends in Colchester. Proved also, That he was called by the late king's writ to sit in parliament in the lords houses, by the name of Earl of Cambridge, and appeared as Earl of Cambridge, and acted as a peer of England, sitting in the lords' house, and in divers committees. That as a peer of England he took the national Covenant, and subscribed to it 'Cambridge' in the house of peers, and took the negative oath, before the

commissioners of the great seal, as a peer of England.

Feb. 21. The High Court of Justice sate, and their order was read to the lord Capel, that they would hear what he could say this day, and then proceed to Judgment.

He said, He was to be comprehended wholly in the Martial Law, and urged the Articles again, which excepted Trial after by parliament; that divers that were in Colchester in his condition had compounded. That breaking Prison for Treason by common law was but felony, and benefit of clergy might be had; at last when he could not get the resolution of the Court, to be referred to a Trial by Martial Law, He moved, That he might not be barred of additional Defence, and that if he must be judged by the common law, he hoped he might have the full benefit of it. He urged for it the late Act, which saith, Though king and lords be laid aside, yet the fundamental laws shall be in force. He recommended to the Court Magna Charta and the Petition of Right, and pressed the consideration of the Act made in favour of those who assisted king H. 7, and the exception in the acts touching the lord Strafford and Canterbury, that they should not be drawn in precedent.\* He desired to see his Jury, and that they might see him, and to be tried by his peers, and said, he believed that a

\* See lord Strafford's Case, ante, vol. 3, p. 1381, and the Note to p. 1519 of that volume. Much light is thrown on this matter by Mr. Hntsell, in a Note to p. 219 of the 4th vol. of his valuable work, entitled "Precedents of Proceedings in the House of Commons, &c. with Observations."

"There is a clause in this Act [of Attainder of Lord Strafford] which, as it has often been made the subject of discussion, and the source of much mistake, it may be proper here to take notice of; it is as follows: 'Provided that no judge or judges, justice or justices, whatsoever, shall adjudge or interpret any act or thing to be treason, nor hear or determine any treason, in any other manner than he or they should or ought to have done before the making of this Act, and as if this Act had never been had or made.' By those who wish to represent this proceeding against lord Strafford, by Bill of Attainder, as illegal, this proviso has been cited to prove that the same Parliament, which passed the Bill, admitted that the proceeding was so arbitrary, that they thought it necessary to enact, "That it should never be used as a precedent." But I apprehend that this is not the true construction of this clause. The intention of inserting it was to obviate a misconception of that clause of the statute of 25th Edw. 3, statute 5, ch. 2, which, after declaring what offences shall be deemed to constitute acts of High Treason, enacts, "And, because that many other like cases of treason may happen in time to come, which a man cannot think nor declare at this present time, it is accorded,

Precedent could not be given of a subject tried for his life, but either by Bill in Parliament, or by a Jury.

Witnesses were heard against the earl of Cambridge.

That if any other case, supposed treason, which is not above specified, doth happen before any Justices, the Justices shall tarry, without any going to judgment of the treason, till the cause be shewed and declared before the King and his Parliament, whether it ought to be judged treason, or other felony." The clause in this Act of Attainder, therefore, means only to declare, That though, in the judgment of Parliament, these offences, charged against the earl of Strafford, were by them adjudged to amount to the crime of High Treason; yet that this judgment should not authorize the Judges of the realm hereafter to adjudge or interpret any similar act to be High Treason; but that if such a case should occur, they should, in obedience to the statute 25th of Edw. 3, "tarry," and not form any judgment upon the authority of what had been done upon this occasion. There is a similar clause in the Rolls of Parliament, in the 11th year of Richard 2, which, after confirming and establishing several accusations and judgments that had been held, concludes, 'Et comment q' diverse pointz sont declarez pur treson, en cest present Parlement, autres q' ne furent declarez par estatut devant, que null Justice ait poair de rendre jugement d'autre cas de treson, n'en autre manere, qu'ils n'avoient devant le commencement de cest present Parlement.' Rot. Parl. vol. 3, p. 250, No. 38. Sir M. Hale, therefore, in his Plac. Cor. vol. 1, ch. 24, p. 269, speaking of the Act of Lord Strafford's Attainder, very properly observes, "That this clause seems a cautious, but a very needless proviso; because this Bill of Attainder was a particular judgment, that did not 'egredi personam,' and no general declarative law to serve the statute of 25th of Edw. 3." That this is the true construction of this clause is confirmed by what Serjeant Maynard says: "I myself drew this proviso; that the judgment upon Lord Strafford should not be drawn into example; else," says he, "liberty had been given to the Judges to have judged treason accumulative; and therefore this should not be drawn into example; but the Judges should hold to the statute of 25th of Edward 3." See also the speeches of Mr. Solicitor-General Winnington, Mr. Finch, and Mr. Powle, in the same debate, and Sir Harbottle Grimstone's construction upon the clause of the 25th of Edward 3. Grey's Debates, vol. 6, p. 379—386. 4 Cobb. Parl. Hist. p. 1065. The Act, 13 and 14 Charles 2, ch. 29, which reverses the earl of Strafford's attainder, alleges several grounds: 1. "That he was condemned upon accumulative treason, none of the pretended crimes being treason apart. 2. That he was judged guilty of constructive treason. 3. That this Bill was violently forced through both Houses,

Feb. 22. The earl of Cambridge, brought before the High Court, produced his Witnesses, some of whom were disallowed, being officers under him, and so *participes criminis*.

Feb. 22. He pleaded, That he had not broken the Negative Oath; for he had not engaged against the parliament, but for the ends in the Scots declaration.

His Counsel moved, That they might, with the Counsel of the Commonwealth, state the case of the Earl; but this was denied, being in case of Treason, and that the Earl's Counsel could only declare their opinions in point of law. Upon the Earl's desire, he had further time granted him.

Feb. 23. The Earl of Holland being extreme ill, as was deposed by his physician, was appointed a further day to be brought before the High Court.

Feb. 26. The Counsel of the earl of Cambridge were heard before the High Court of Justice, they pleaded, That the Earl was no free denizen, and though his father was naturalized, and his heirs, yet he not being born in the kingdom, could receive no benefit thereof. That if he had been a free denizen; yet it was not prejudicial to him, because he acted by command and authority of the parliament of another nation, and not of himself, who was governed by another distinct law.

The Earl pleaded the Articles given him by major general Lambert, who had power to do it and secured him, by a party of his forces; that he was ordered to be banished by parliament, paying 100,000*l.* for his delinquency.

Feb. 27. The earl of Holland was brought to the High Court, and the Charge of High Treason read against him, and aggravated by the Solicitor General, That the Earl was an eminent courtier, and probably did ill offices,

by mobs of armed and tumultuous persons. 4. That when the King signed the commission for giving the royal assent to the Bill, 'he did it with exceeding great sorrow, and it was ever remembered by him with inexpressible grief of heart; and out of his majesty's great piety he did publicly express it, when his own sacred life was taken away by the most detestable traitors that ever were.' For all which causes the Act of Attainder is repealed, revoked, and reversed." See vol. 3, p. 1527. See in the 10th vol. of Grey's Debates, p. 206, a debate in the year 1691, in which Mr. Solicitor-General Somers says, "The power of impeachment ought to be, like Goliath's sword, kept in the Temple, and ought not to be used but on great occasions. The security of your constitution is lost, when you lose this power. The statute of 25 Edward 3. did foresee that men would be above the law, and, I believe, did not take away those that were traitors at the common law. 'Seductio Regis' can be punished no otherwise than in Parliament." 5 Cobb. Parl. Hist. 677.

and persuaded the king to go from the parliament, and went afterwards himself to Oxford. That he returned from thence, had his sequestration taken off: that he published a Declaration promising in the word of a gentleman, and a Christian, that he would stand by the Parliament, he took the Negative Oath, and the Covenant. Yet the last year he engaged, and probably contrived the insurrection, wherein the duke of Bucks, and his brother, and others were drawn in, and he boasted that he should shortly be 12,000 strong, and master the parliament, and restore the king.

The Earl pleaded, That his fact was not capital, but Criminal, that he had quarter given him, when he was taken at St. Needs, and that both houses had past an Order since for his banishment; the which excused the aggravations, especially in his last action.

March 1. Upon a Petition of the countess of Holland to the High Court, and proof of the Earl's being very sick, the Court gave him further time to answer.

March 3. The Earl of Holland before the High Court pleaded the same Plea he had done before, of Free Quarter given him, and Witnesses were examined on both sides; he desired Counsel, but it was denied.

The earl of Cambridge made an additional defence, not much varying from what he had said before; in answer whereunto, the Counsel of the Common-Wealth did speak five or six hours.

March 6. The earl of Cambridge brought before the High Court, and asked what he had further to say, why Sentence should not be pronounced against him, spake to the same effect as formerly.

The earl of Holland and lord Goring extenuated what they could their offences, as being rash, not much hurtful, &c.

The lord Capel briefly repeated what he had formerly said, and further observed an Ordinance of Parliament, 'That Quarter should not be given to Irish Rebels for life,' which implied, that quarter given to others, should be inviolable for life.

Sir John Owen pleaded quarter.

The President in his Scarlet robes spake many hours, in answer to the several pleas of the Prisoners, and at last Sentence was given against them all, that their heads should be severed from their bodies, yet with relation to the mercy of parliament.

March 7. The earl of Warwick, and the countess of Holland, presented a Petition to the House of Commons for the life of the earl of Holland, and divers ladies for the others, against whom the High Court had pronounced sentence of Death. After some hours debate upon these Petitions, the House resolved upon the question, not to proceed any further upon these Petitions, but to leave them to the Justice of the Court that sentenced them.

Then the Ladies Petitioned the High Court,

who only reprieved the Execution for two days..

March 8. The House of Commons ordered, "That the lord Capel should not be reprieved."

And carried by one vote, That the lord Goring should be reprieved; this one vote was the Speaker, who carried the House being equally divided 24 of each part; and he said he did it, because he had formerly received some civilities from the lord Goring, and his single Vote now saved his life.

The House was divided upon the question, Whether the earl of Holland should be reprieved or not, and the Speaker gave his voice against him.

The Resolution touching duke Hamilton's Reprieve past in the Negative, and for sir John Owen in the affirmative, and these Votes ordered to be sent to the High Court of Justice.

March 9. The earl of Cambridge was brought to the Scaffold in the Palace-Yard at Westminster, and after some discourse with Dr. Sibbalds a minister that came with him, he turned to the people, and seeing them so great a multitude, he said his voice would not serve for them to hear him, and therefore directed his Speech to those upon the Scaffold with him.

He confessed "his Religion to be according to that of the kirk of Scotland, that he had ever been loyal to the late king, and wished well to his posterity, and that none more desired the peace and happiness of this and other kingdoms than himself.—That his coming into England with the late Army, was out of no treasonable or ill intent, but for the ends contained in the Scots Declaration, and what he did, was as a servant to that parliament and kingdom.—That in that employment, next to the settling of Religion, the establishing the King was his greatest aim: and he wished his blood, in order to the kingdom, might be the last that should be spilt. That if he would have confessed who invited the Scots army into England, it would probably have saved his life."

\* "Thus," says Whitlocke, "the lord Goring, who had been no friend to the religious party, was saved, and the earl of Holland, who had been a most civil person to all, and a very great friend to the Old Puritans, and protected them in the time of his greatest interest, by the same single Vote lost his life. This may be a caution to us against the affection of popularity, when you see the issue of it in this noble gentleman, who was as full of generosity and courtship to all sorts of persons, and readiness to help the oppressed, and to stand for the rights of the people, as any person of his quality in this nation. Yet this person was by the representatives of the people, given up to execution for Treason; and another Lord, who never made profession of being a friend to liberty, either civil or spiritual, and exceeded the Earl as much in his crimes, as he came short of him in his popularity, the life of this lord was spared by the people."

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Then he made a short Prayer, Dr. Sibbalds kneeling with him, and being risen, he cast off his cloak and doublet, put on a little white sattin cap, forgave the Executioner, and gave him ten pounds, a little after he spake a while in private with his servants, and again made a short prayer. His countenance was cheerful, and all the time of his being on the Scaffold, there appeared in him no fear, disorder, change of countenance, or discomposure. He took his leave of Dr. Sibbalds, embracing him; and of his servants, whom he commended, particularly Mr. Lewys his secretary.—He laid down his head upon the Block, and after a short Prayer he gave the signal, by stretching out his hand, and the Executioner struck off his head at one blow; which was wrapped in a red sarcenet scarf, and with his body put into the coffin and carried away.

Next came upon the Scaffold the earl of Holland, who was accompanied by Mr. Hodges, and Mr. Bolton, ministers, divers of his servants and other gentlemen with him: from Mr. Hodges, a person of eminent parts and piety, and who it is believed would not tell an untruth, was this relation:

That between the time of his Sentence and Execution, he only lay in the Earl's bed-chamber, to discourse with him, and to comfort him, being admitted and desired by him to that freedom, when he would not see his lady, nor any of his children, which he said would add too much to his sorrow, and discompose his thoughts, which were now to be set only upon another world. That the Earl for several days after his Sentence, was in great perplexity and agony of his thoughts, and said, 'he had not assurance of Pardon of his sins, and of the love of God to him, that he was not prepared to die, that Christ would not be advantage to him.' Mr. Hodges endeavoured to allay these doubts, and to comfort the Earl with declaring to him 'the infiniteness of God's mercies, and his willingness to pardon all poor sinners that come to him through Christ, that never any who sought the love of God in Christ with a true faith in Christ did ever fail to obtain the assurance of it to his distressed soul.'

The Earl desired Mr. Hodges to pray with him, to seek God for this mercy, which Mr. Hodges did; and upon this subject, with us earnest a seeking of the Lord, for it, as he could express; and the Earl himself frequently prayed to the same effect, and with wonderful fervency of expression. That still the Earl continued in a desponding condition, till the day before his suffering, when immediately after Prayer, the Earl with rejoicing, told Mr. Hodges, 'that God had heard their prayers, and his Spirit was come in to comfort him, that he had prevailed, through the strength of Christ, over Satan and all his spiritual enemies, and all temptations, that the Lord had given into him an assurance of his love in Christ; and that now he was both ready and willing to die.'—Mr. Hodges was much joyed at this, and they went to Prayer

together, to bless God for this great mercy, and to beg the continuance of this frame of Spirit to the last, and God heard them in this also.

The Earl, who had not slept several nights before, nor eat his meat, now supped, and went to bed, with no more disturbance in his spirits, than in his best health, and slept so soundly all the night and this morning that they were much troubled to awaken him.

He went to the Scaffold without being any whit daunted, and after some discourse with the gentlemen, he showed himself to the people, who were generally moved with sorrow, for the suffering of so gallant a person, whose mien and comeliness would move compassion. He directed his Speech to the people at the front of the Scaffold towards Westminster-Hall, made a large profession of his Religion as a Protestant, mentioned his Birth and Education, excused his going to the King from the Parliament, and return to the Parliament again, and extenuated his late Insurrection.

After he had ended his Speech, he turned to the other side of the Scaffold and kneeled down to his private Prayers, after which he had conference with Mr. Hodges and Mr. Bolton. Then he pulled off his gown and doublet, having on him a white satin waistcoat, and put on a white satin cap, and prepared himself for the block, took his leave and embraced with much affection Mr. Hodges, Mr. Bolton, his servants, and others, forgave the Executioner, and gave him money ten pounds in gold. Then he laid himself down on the block, prayed a while, and gave the sign by stretching forth his arms, upon which the executioner severed his head from his shoulders at one blow, which with his body was presently put into a coffin, and carried away.

Next was my lord Capel brought to the scaffold, much after the manner of a stout Roman: he had no minister with him, nor shewed any sense of death approaching, but carried himself all the time he was upon the Scaffold, with that boldness and resolution as was to be admired. He wore a sad coloured suit, his hat cocked up, and his cloak thrown under one arm; he looked towards the people at his first coming up and put off his hat in manner of a salute, he had a little discourse with some gentlemen upon the Scaffold, and passed up and down in a careless posture.

He went to the front of the Scaffold and leaning over, made a Speech to the people, he said, 'He died a Protestant according to the Religion professed in the 39 Articles, the best he knew of. That he was condemned for keeping the fifth Commandment written by God's own finger, which commanded to obey magistrates; and he died for obeying his King, the most religious of all princes; and his son prince Charles, who he said, was King, and the rest of the king's children heirs to the crown.' He concluded with a desire to the people to pray for him, and after a short discourse with some on the Scaffold, he spake once or twice to the Executioner, and gave him money, then he put off his cloak and

doublet with much confidence, and put on a white cap, took leave briefly of the gentlemen on the scaffold, and prepared for the block. Where laying himself down, with hands and eyes lifted up, he prayed a while, after that, fitting himself to the block, upon the signal of stretching forth his right hand, the Executioner severed his head from his body at one blow, which were coffined up and carried away.

May 7th, upon the Petitions of Lord Goring and C. Owen, there were orders for their pardon and enlargement.

The following Account of the Execution of the Earl of Holland and Lord Capel\* is taken from "Heath's English Martyrs."

*The Earl of Holland's Speech on the Scaffold, immediately before his Death, March 9, 1649.*

*Holland.* It is to no purpose (I think) to speak any thing here. Which way must I speak? And then being directed to the front of the Scaffold, he (leaning over the rails) said; I think it is fit to say something, since God hath called me to this place. The first thing which I must profess, is, what concerns my religion, and my breeding, which hath been in a good family, that hath ever been faithful to the true Protestant Religion, in the which I have been bred, in the which I have lived, and in the which, by God's grace and mercy, I shall die. I have not lived according to that education I had in that family where I was born and bred. I hope God will forgive me my sins, since I conceive it is very much his pleasure to bring me to this place, for the sins that I have committed. The cause that hath brought me hither, I believe, by many hath been much mistaken. They have conceived, that I have had ill designs to the state, and to the kingdom; truly I look upon it as a judgment, and a just judgment of God, not but I have offended so much the state, and the kingdom, and the parliament, as that I have had no extreme vanity in serving them very extraordinarily. For those actions that I have done, I think it is known they have been ever very faithful to the public, and very particularly to parliaments. My affections have been ever expressed truly and clearly to them. The dispositions of affairs now have put things in another posture than they were when I was engaged with the parliament. I have never gone off from those principles that ever I have professed; I have lived in them, and by God's grace will die in them. There may be alterations and changes that may carry them further than I thought reasonable, and, truly there I

\* The talents and virtues of lord Capel were such as to render it highly probable, that a dread of their influence precluded him from mercy. For the death of lord Capel's son, the earl of Essex, see the Case of Braddon and Speke, A. D. 1684, post.

left them : but there hath been nothing that I have said, or done, or professed, either by covenant or declaration, which hath not been very constant and very clear, upon the principles that I ever have gone upon ; which was to serve the king, the parliament, religion (I should have said in the first place) the commonwealth, and to seek the peace of the kingdom ; that made me think it no improper time, being pressed out by accidents and circumstances, to seek the peace of the kingdom, which I thought was proper, since there was something then in agitation, but nothing agreed on, for sending Propositions to the king, that was the furthest aim that I had, and truly beyond that I had no intention, none at all. And God be praised, although my blood comes to be shed here, there was I think scarce a drop of blood shed in that action that I was engaged in. For the present affairs as they are, I cannot tell how to judge of them ; and truly they are in such a condition, as (I conceive) no body can make a judgment of them, and therefore I must make use of prayers, rather than of my opinion ; which are, That God would bless this kingdom, this nation, this state ; that he would settle it in a way agreeable to what this kingdom hath been happily governed under ; by a king, by the lords, by the commons ; a government that I conceive it hath flourished much under, and I pray God the change of it bring not rather a prejudice, a disorder, and a confusion, than the contrary. I look upon the posterity of the king, and truly my conscience directs me to it, to desire, that if God be pleased, that these people may look upon them with that affection that they owe, that they may be called in again, and they may be, not through blood nor through disorder, admitted again into that power, and to that glory, that God in their birth intended to them. I shall pray with all my soul for the happiness of this state, of this nation, that the blood which is here spilt, may even be the last that may fall among us ; and truly I should lay down my life with as much cheerfulness as ever person did, if I conceived that there would be no more blood follow us ; for a state of affairs that are built upon blood, is a foundation for the most part that doth not prosper.—After the blessing that I give to the nation, to the kingdom, and truly to the parliament, I do wish with all my heart, happiness and a blessing to all those that have been authors in this business ; and truly, that have been authors in this very work that bringeth us hither : I do not only forgive them, but I pray heartily and really for them, as God will forgive my sins, so I desire God may forgive them.

I have a particular relation, as I am Chancellor of Cambridge, and truly I must here, since it is the last of my prayers, pray to God that that university may go on in that happy way which it is in, that God may make it a nursery to plant those persons that may be distributed to the kingdom, that the souls of

the people may receive a great benefit, and a great advantage by them, and, I hope, God will reward them for their kindness, and their affections that I have found from them. [Looking towards Mr. Bolton.] I have said what religion I have been bred in, what religion I have been born in, what religion I have practised, I began with it, and I must end with it. I told you that my actions and my life have not been agreeable to my breeding. I have told you likewise that the family where I was bred, hath been an exemplary family (I may say so, I hope, without vanity) of much affection to religion, and of much faithfulness to this kingdom, and to this state. I have endeavoured to do those actions that became an honest man, and a good Englishman, and which became a good Christian. I have been willing to oblige those that have been in trouble, those that have been in persecution, and truly I find a great reward of it ; for I have found their prayers and their kindness now in this distress, and in this condition, and I think it a great reward, and I pray God reward them for it.

I am a great sinner, and I hope God will be pleased to hear my prayers, to give me faith to trust in him, that as he hath called me to death at this place, he will make it but a passage to an eternal life through Jesus Christ, which I trust to, which I rely upon, and which I expect by the mercy of God. And so I pray God bless you all, and send that you may see this to be the last execution, and the last blood that is likely to be spilt among you. And then turning to the side-rail, he prayed for a good space of time ; after which,

Mr. Bolton said, My lord ; now look upon him whom you have trusted. My lord, I hope that here is your last prayer, there will no more prayers remain, but praises ; and I hope that after this day is over there will a day begin that shall never have end ; and I look upon this, my lord, the morning of it, the morning of that day. My lord, you know where your fulness lies, where your riches lie, where is your only rock to anchor on ; you know there is fulness in Christ : If the Lord comes not in with fulness of comfort to you, yet resolve to wait upon him while you live, and to trust in him when you die ; and then say, I will die here, I will perish at thy feet, I will be found dead at the feet of Jesus Christ. Certainly, he that came to seek and save lost sinners, will not reject lost sinners when they come to seek him ; he that intreateth us to come, will not slight us when we come to intreat him. My lord, there is enough there, and fix your heart there, and fix your eyes there ; that eye of faith, and that eye of hope ; exercise these graces now, there will be no exercise hereafter. As your lordship said, here take an end of faith, and take an end of hope, and take a farewell of repentance, and all these ; and welcome God, and welcome Christ, and welcome glory, and welcome happiness to all eternity ; and so it will be an happy passage then, if it be a passage here from misery to happiness. And

though it be but a sad way, yet, if it will bring you into the presence of joy, although it be a valley of tears, although it be a shadow of death, yet if God will please to bring you, and make it a passage to that happiness, welcome Lord. And I doubt not, but God will give you an heart to taste some sweetness and love in this bitter potion, and to see something of mercy and goodness to you, and shew you some sign and token of good, so that your soul may see that which we have had already experience of (blessed be God for it) many experiences, many expressions, not only in words, nor tears; God hath not left us without much comfort and evidence, and I hope, my Lord, you that have given so many evidences to us, I hope you want none yourself, but that the Lord will be pleased to support you, and bear up your spirit, and if there want evidence, there is reliance, my security lies not in my knowing that I shall come to Heaven, and come to glory, but in my resting and relying upon him; when the anchor of faith is thrown out, there may be shakings and tossings, but there is safety; nothing shall interrupt safety, although something may interrupt security: my safety is sure, although I apprehend it not: and what if I go to God in the dark? What if I come to him, as Nicodemus did, staggering in the night? It is a night of trouble, a night of darkness, tho' I come trembling and staggering in this night, yet I shall be sure to find comfort and fixedness in him. And the Lord of Heaven be the strength, stay, and support of your soul, and the Lord furnish you with all those graces which may carry you into the bosom of the Lord Jesus, that when you expire this life, you may be able to expire it into him, in whom you may begin to live to all eternity; and that is my humble prayer.

*Holland.* Mr Bolton, God hath given me long time in this world; he hath carried me through many great accidents of fortune, he hath at last brought me down into a condition, where I find myself brought to an end, for a disaffection to this state, to this parliament, that, as I said before, I did believe nobody in the world more unlikely to have expected to suffer for that cause; I look upon it as a great judgment of God for my sins. And truly, sir, since that the death is violent, I am the less troubled with it, because of those violent deaths that I have seen before; principally my Saviour, that hath shewed us the way, how, and in what manner he hath done it, and for what cause, I am the more comforted, I am the more rejoiced. It is not long since the king my master passed in the same manner; and truly I hope that his purposes and intentions were such, as a man may not be ashamed, not only to follow him in the way that was taken with him, but likewise not ashamed of his purposes, if God had given him life. I have often disputed with him concerning many things of this kind, and I conceive his sufferings, and his better knowledge, and better understanding (if God had spared him life) might have made him

a prince, very happy toward himself and this kingdom. I have seen and known that those blessed souls in Heaven have passed thither by the gate of sorrow, and many by the gate of violence; and since it is God's pleasure to dispose me this way, I submit my soul to him, with all comfort, and with all hope, that he hath made this my end, and this my conclusion, that though I be low in death, yet nevertheless this lowness shall raise me to the highest glory for ever.—Truly, I have not said much in public to the people, concerning the particular actions that I conceive I have done by my counsels in this kingdom, I conceive they are well known, it were something of vanity, methinks, to take notice of them here. I will rather die with them, with the comfort of them in my own bosom, and that I never intended in this action, or any action that ever I did in my life, either malice, or bloodshed, or prejudice to any creature that lives. For that which concerns my religion, I made my profession before of it, how I was bred, and in what manner I was bred, in a family that was looked upon to be no little notorious in opposition to some liberties they have conceived then to be taken; and truly, there was some mark upon me, as if I had some taint of it, even throughout my whole ways that I have taken: every body knows what my affections have been to many that have suffered, to many that have been in troubles in this kingdom, I endeavoured to relieve them, I endeavoured to oblige them, I thought I was tied so by my conscience, I thought it by my charity, and truly, very much by my breeding; God hath now brought me to the last instant of my time, all that I can say, and all that I can adhere unto, is this, That as I am a great sinner, so I have a great Saviour: that as he hath given me here a fortune to come publicly in a shew of shame in the way of this suffering (truly I understand it not to be so) I understand it to be a glory; a glory, when I consider who hath gone before me, and a glory, when I consider I had no end in it, but what I conceive to be the service of God, the king, and the kingdom, and therefore my heart is not charged much with any thing in that particular, since I conceive God will accept of the intention, whatsoever the action seems to be. I am going to die, and the Lord receive my soul; I have no reliance, but upon Christ: For myself, I do acknowledge, that I am the unworriest of sinners, my life hath been a vanity, and a continued sin, and God may justly bring me to this end, for the sins I have committed against him, and were there nothing else but the iniquities that I have committed in the way of my life, I look upon this as a great justice of God, to bring me to this suffering, and to bring me to this punishment; and those hands that have been most active in it, if any such there hath been; I pray God forgive them; I pray God there may not be many such trophies of their victories, but that this may be (as I said before) the last shew that this people shall see, of the blood of per-

sons of condition, of persons of honour: I might say something of the way of our trial, which certainly hath been as extraordinary, as any thing I think hath ever been seen in this kingdom; but because that I would not seem as if I made some complaint, I will not so much as mention it, because nobody shall believe I repine at their actions, that I repine at my fortune; it is the will of God, it is the hand of God under whom I fall; I take it entirely from him, I submit myself to him, I shall desire to roll myself into the arms of my blessed Saviour, and when I come to this place, [pointing to the block,] when I bow down myself there, I hope God will raise me up; and when I bid farewell, as I must now to hope and to faith, that love will abide; I know nothing to accompany the soul out of this world, but love; and I hope that love will bring me to the fountain of glory in heaven, through the arms, mediation, and the mercy of my Saviour Jesus Christ, in whom I believe, O Lord help my unbelief.

*Hodges.* The Lord make over unto you the righteousness of his own Son, it is that treasury that he hath bestowed upon you; and the Lord shew you the light of his countenance, and fill you full with his joy and kindness. O my dear lord, the Lord of heaven and earth be with you, and the Lord of heaven and earth bring you to that safety.

*Holland.* I shall make as much haste as I can to come to that glory, and the Lord of heaven and earth take my soul; I look upon myself entirely in him, and hope to find mercy through him, I expect it, and through that fountain that is opened for sin and for uncleanness, my soul must receive it; for did I rest in any thing else, I have nothing but sin and corruption in me, I have nothing but that, which instead of being carried up into the arms of God, and of glory, I have nothing but may throw me down into hell.

*Bolton.* But my lord, when you are clothed with the righteousness of another, you will appear glorious, though now sinful in yourself; The apostle saith, 'I desire not to be found in 'my own righteousness,' and when you are clothed with another, the Lord will own you, and I shall say but thus much: Doubt not that ever God will deny salvation to sinners that come to him, when the end of all his death and sufferings was the salvation of sinners, whenas, I say, the whole end, and the whole design, and the great work that God had to do in the world, by the death of Christ, wherein he laid out all his counsels, and infinite wisdom, and goodness, beyond which there was a *non ultra* in God's thoughts, when this was the great design and great end, the salvation of poor sinners, that poor souls should come over to him, and live; certainly when sinners come, he will not reject, he will not refuse. And, my lord, do but think of this, the greatest work that ever was done in the world, was the blood of Christ that was shed, never any thing like it: And this blood of Christ that was shed, was

shed for them that come, if not for them, for none, it was in vain else: You see the devils they are out of capacity of good by it, the angels they have no need of it, wicked men will not come, and there are but few that come over, but a few that come over, and should he deny them, there were no end nor fruit of the blood and sufferings of the Lord Jesus: and had your lordship been with Christ in that bloody agony, when he was in that bloody sweat, sweating drops of blood, if you had asked him, Lord, what art thou now a doing, art thou not now reconciling an angry God and me together, art thou not pacifying the wrath of God? art thou not interposing thyself between the justice of God and myself? Would he not have said, Yea? and surely then he will not deny it now. My lord, his passions are over, his compassions still remain, and the larger and greater, because he is gone up into an higher place, that he may throw down more abundance of his mercy and grace upon you, and, my lord, think of that infinite love, that abundance of riches in Christ: I am lost, I am empty, I have nothing, I am poor, I am sinful; be it so, as bad as God will make me, and as vile as I possibly can conceive myself, I am willing to be: but when I have said all, the more I advance that riches and honour that grace of God. And why should I doubt, when by this he puts me into a capacity, into a disposition for him to shew me mercy, that by this I may the better advance the riches of his grace, and say, Grace, grace to the Lord to all eternity, that God should own such a creature that deserves nothing; and the less I deserve, the more conspicuous is his grace: And this is certain, the riches of his grace he throweth amongst men, that the glory of his grace might be given to himself; if we can give him but the glory of his grace, we shall never doubt to partake of the riches of it; and that fulness, my lord, that fulness be your comfort, that fulness of mercy, that fulness of love, that fulness of righteousness and power be now your riches, and your only stay, and the Lord interpose himself between God and you, as your faith hath endeavoured to interpose him between God and your soul; so I doubt not there he stands, my lord, to plead for you, and when you are not able to do any thing yourself, yet lie down at the feet of him that is a merciful Saviour, and knows what you would desire, and wait upon him while you live, trust in him when you die, there is riches enough, and mercy enough, if he open not, yet die at his door, say there I'll die, there is mercy enough.

*Holland.* And here is the place where I lie down before him, from whence I hope he will raise me to an eternal glory through my Saviour, upon whom I rely, from whom only I can expect mercy: into his arms I commend my spirit, into his bleeding arms, that when I leave this bleeding body that must lie upon this place, he will receive that soul that ariseth out of it, and receive it into his eternal mercy, through the merits, through the worthiness,

through the mediation of Christ, that hath purchased it with his own most precious blood.

*Bolton.* My lord, though you conclude here, I hope you begin above, and though you put an end here, I hope there will never be an end of the mercy and goodness of God, and if this be the morning of eternity, if this be the rise of glory, if God pleaseth to throw you down here, to raise you up for ever, say, Welcome Lord, welcome that death that shall make way for life, and welcome any condition that shall throw me down here, to bring me into the possession of Jesus Christ.

*Hodges.* My lord, if you have made a deed of gift of yourself to Jesus Christ, to be found only in him, I am confident you shall stand at the day of Christ, my dear lord, we shall meet in happiness.

*Holland.* Christ Jesus receive my soul, my soul hungers and thirsts after him, clouds are gathering, and I trust in God through all my heaviness, and I hope through all impediments, he will settle my interest in him, and throw off all the claim that Satan can make unto it, and that he will carry my soul in despite of all the calumnies, and all that the Devil and Satan can invent, will carry it into eternal mercy, there to receive the blessedness of his presence to all eternity.

*Hodges.* My lord, it was his own by creation, it is his own now by redemption and purchase, and it is likewise his own by resignation: O my lord, look therefore up to the Lamb of God that sits at the right hand of God, to take away the sins of the world, O that Lamb of God!

*Holland.* That Lamb of God, into his hands I commit my soul: and that Lamb of God that sits upon the throne to judge those 24 that fall down before him, I hope he will be pleased to look downward and judge me with mercy that fall down before him, and that adore him, that only trusts upon his mercy for his compassion; and that as he hath purchased me, he would lay his claim unto me now and receive me.

*Bolton.* My lord, think of this, there is no condemnation to them who are in Christ; who is it that can condemn? it is Christ that justifies: and therefore look now upon this, my lord, upon this Christ, upon this Christ that justifies: hell, death, sin, Satan; nothing shall be able to condemn, it is Christ that justifies you.

*Holland.* Indeed if Christ justify, nobody can condemn, and I trust in God, in his justification, though there is a confusion here without us, and though there are wonders and staring that now disquiet, yet I trust that I shall be carried into that mercy, that God will receive my soul.

*Bolton.* I doubt not my lord but as you are a spectacle of pity here, so you are an object of God's mercy above.

*Holland.* Then the Earl of Holland looking over among the people, pointing to a soldier said, This honest man took me a prisoner, you

little thought I should have been brought to this, when I delivered myself to you upon conditions: and espying captain Watson on horse-back, putting off his hat, said to him, God be with you, Sir, God reward you, Sir.

*Bolton.* My lord, throw yourself into the arms of mercy, and say, there I will anchor, and there I will die, he is a Saviour for us in all conditions, whither should we go? he hath the words of eternal life: and upon him do you rest, wait while you live, and even trust in death.

*Holland.* Here must now be my anchor, a great storm makes me find my anchor; and but in storms nobody trusts to his anchor; and therefore I must trust upon my anchor, [Upon that God, said Mr. Bolton, upon whom your anchor trusts,] yea, God I hope, will anchor my soul fast upon Christ Jesus: and if I die not with that clearness and heartiness that you speak of, truly, I will trust in God, though he kill me, I will rely upon him, and in the mercy of my Saviour.

*Bolton.* There is mercy enough, my lord, and to spare, you shall not need to doubt; they shall never go begging to another door (my lord) that come to him.—Then the earl of Holland speaking to Mr. Hodges, said, I pray God reward you for all your kindness, and pray as you have done, instruct my family, that they may serve God with faithfulness and holiness, with more diligence, than truly I have been careful to press them unto; you have the charge of the same place, you may do much for them, and I recommend them to your kindness, and the goodness of your conscience.

Dr. Sibbald standing upon the scaffold, in his passage to col. Beecher expressed himself thus to his lordship.

Dr. Sibbald. The Lord lift up the light of his countenance upon you, and you shall be safe.

*Holland.* Then the earl of Holland embraced lieutenant col. Beecher, and took his leave of him: After which he came to Mr. Bolton, and having embraced him, and returned him many thanks for his great pains and affections to his soul, desiring God to reward him, and return his love into his bosom. Mr. Bolton said to him, the Lord God support you, and be seen in this great extremity; the Lord reveal and discover himself to you; and make your death the passage unto eternal life.

Then the earl of Holland turning to the executioner, said, Here, my friend, let my cloaths and my body alone, there is ten pounds for thee, that is better than my cloaths, I am sure of it.

*Executioner.* Will your lordship please to give me a sign when I shall strike?

And then his lordship said, You have room enough here, have you not? and the executioner said, Yes.

*Bolton.* The Lord be your strength, there is riches in him; the Lord of Heaven impart himself to you, he is able to save to the uttermost: We cannot fall so low as to fall

below the everlasting arms of God : and therefore the Lord be a support and stay to you in your low condition, that he will be pleased to make this an advantage to that life and glory that will make amends for all.

*Holland.* Then the earl of Holland turning to the executioner, said, friend, do you hear me, if you take up my head, do not take off my cap. Then turning to his servants, he said to one, fare you well, thou art an honest fellow ; and to another, God be with thee, thou art an honest man : and then said, stay, I will kneel down, and ask God forgiveness ; and then prayed for a pretty space, with seeming earnestness.

*Boston.* The Lord grant you may find life in death.

*Holland.* Which is the way of lying ? (which they shewed him,) and then going to the front of the scaffold, he said to the people, God bless you all, and God deliver you from any such accident as may bring you to any such death as is violent, either by war, or by these accidents, but that there may be peace among you, and you may find that these accidents that have happened to us, may be the last that may happen in this kingdom ; it is that I desire, it is that I beg of God, next the saving of my soul : I pray God give all happiness to this kingdom, to this people, and this nation : (and then turning to the Executioner, said) how must I lie ? I know not.

*Executioner.* Lie down flat upon your belly : (and then having laid himself down, he said, must I lie closer ?)

*Execut.* Yes, and backward.

*Holland.* I will tell you when you shall strike ; and then as he lay seemed to pray with much affection for a short space, and then lifting up his head, said, where is the man ? And seeing the Executioner by him, he said, stay while I give the sign ; and presently after stretching out his hand, and the Executioner being not fully ready, he said, now, now, and just as the words were coming out of his mouth, the Executioner at one blow severed his head from his body.\*

\* The Negative Oath referred to in the above Proceedings was as follows :

‘ I, A. B. do swear from my heart, that I will not directly, nor indirectly, adhere unto, or willingly assist the King in this War, or in this cause, against the Parliament, nor any Forces raised without the consent of the two Houses of Parliament, in this cause or war. And I do likewise swear, that my coming and submitting myself under the power and protection of the Parliament, is without any manner of design whatsoever, to the prejudice of the proceedings of this present Parliament, and without the direction, privacy, or advice of the King, or any of his Council, or Officers, other than what I have now made known. So help me GOD, and the contents of this Book.’

#### *Account of the Execution of the Lord Capel.*

We will now take a view of the lord Capel, after the time of his Condemnation, when he was to encounter and look death in the face. He always kept a very chearful and well composed temper of mind, which proceeded from true Christian principles, he would often say, ‘ it was the good God he served, and the good cause he had served for, that made him not to fear death,’ adding, ‘ that he never had the temptation of so much as a thought to check him for his engagement in this quarrel, for he took it for his crown and glory, and wished he had a greater ability, and better fortune to engage in it.’

The afternoon before his suffering, he was a great while in private with a minister, where bewailing, with that sense which became a true, and not despairing penitent, the sins of his life past, the greatest he could remember, was his voting my lord of Strafford’s death, which though, as he said, he did without any malice at all, yet he confessed it to be a very great sin, and that he had done it out of a base fear (his own words) of a prevailing party, of which he had very often and very heartily repented, and was confident of God’s pardon for it. Then he desired to receive the blessed sacrament before he died. After this, (being afraid of some danger to the minister that attended him, for that work of love) and some conference in order to his preparation, both for his provision and his voyage, the sacrament and his death, he desired to go to prayers, which being performed, he returned to his private devotions.

The next morning being the day of his death, he desired the minister, who was with him before, to hear and join with him in prayers, which he did, for half an hour in an excellent method, very apt expressions, and most strong, hearty, and passionate affections ; first confessing and bewailing his sins with strong cries and tears, then humbly and most earnestly desiring God’s mercy through the merits of Christ alone. Secondly, for his dear lady and children with some passion, but for her especially with most ardent affections, recommending them to the Divine Providence with great confidence and assurance, and desiring for them rather the blessings of a better life than of this. Thirdly, for the king, church, and kingdom. And lastly, for his enemies, almost with the same ardour and affection.

After Prayer ended, my lord of Norwich and sir John Owen being sent for, the minister read the whole office of the church for Good Friday, and then after a short homily for the occasion, he received the sacrament again, in which action he behaved himself with great humility, zeal, and devotion.

Being demanded after the receiving thereof how he found himself, he replied very much better, stronger and cheerfuller for that heavenly repast, and that he doubted not to walk like a Christian through the vale of death in the strength of it. But he was to have an agony

before his passion, and that was the parting with his wife, eldest son, now earl of Essex, his son in law, two of his uncles, and sir T. C., especially his parting with his dearest lady, which indeed was the saddest spectacle that could be. In which occasion, as he could not choose but shew and confess a little of human frailty, yet even then, he did not forget both to comfort and counsel her, and the rest of his friends; particularly in blessing the young lord, he commanded him never to revenge his death, though it should be in his power, the like he said unto his lady. He told his son he would leave him a legacy out of David's Psalms, and that was this: 'Lord lead me in a plain path.' 'For 'boy,' saith he, 'I would have you a plain honest man, and hate dissimulation.'

After this was past, with much ado his wife and the rest of his friends were persuaded to be gone, and then being all alone with the minister, he said, 'Doctor, the hardest part of my work in this world is now past;' meaning the parting with his wife. Then he desired the said minister to pray preparatively for his death, that in the last action he might so behave himself, as might be 'most for God's glory, for the 'endearing of his dead master's memory, and 'his present master's service,' and that he might avoid the doing or saying of any thing, which might savour either of ambition or vanity. This being done, he was conveyed with the other two lords, who suffered with him, to sir Robert Cotton's, where the minister staid with him till he was called to the Scaffold, whither the guard of soldiers permitted him not to come, so that my lord took leave of him there.

The same day he died, he wrote the following Letter to his Wife.

'My dearest life; My eternal life is in Christ  
'Jesus: my worldly considerations in the highest degree thou hast deserved, let me live  
'long here in thy dear memory, to the comfort  
'of my family, our dear children, whom God  
'out of mercy in Christ hath bestowed upon us.  
'I beseech thee take care of thy health, sorrow  
'not, afflict not thyself too much; God will be  
'unto thee better than an husband, and to my  
'children better than a father: I am sure he is  
'able to be so: I am confident he is graciously  
'pleased to be so. God be with thee, my most  
'virtuous wife. God multiply many comforts  
'to thee and my children, which is the fervent  
'prayer of thy,' &c.

When the other two Lords were behended, he was brought last to the Scaffold, where he spake as followeth:

His lordship in the way to the Scaffold, put off his hat to the People on both sides, looking very austerely about him: And being come upon the Scaffold, lieutenant colonel Beecher said to him, 'Sir, Is your chaplain here?'

*Capel.* No, I have taken my leave of him: and perceiving some of his servants to weep, he said, Gentlemen, refrain yourselves, refrain yourselves; and turning to lieutenant colonel Beecher, he said, What? did the lords speak with their hats off, or no?

*Col. Beecher.* With their hats off.

And then coming to the front of the Scaffold, he said, I shall hardly be understood here, I think, and then began his Speech as followeth:

*Capel.* The conclusion that I made with those that sent me hither, and are the cause of this violent death of mine, shall be the beginning of what I shall say to you; When I made an address to them, which was the last, I told them with much sincerity, that I would pray to the God of all mercies, that they might be partakers of his inestimable and boundless mercies in Jesus Christ; and truly I did pray that prayer: and I beseech the God of Heaven forgive any injury they have done to me, from my soul I wish it. And truly, this I tell you as a Christian, to let you see I am a Christian. But it is necessary I should tell you somewhat more, that I am a Protestant: And truly, I am a Protestant, and very much in love with the profession of it, after the manner as it was established in England by the 39 articles; a blessed way of profession, and such a one as truly, I never knew none so good. I am satisfied from being a Papist, which some body have, truly, very unworthily at some time taken me withal, that truly, I profess to you, and though I love good works, and commend them to works, yet I hold they have nothing at all to do in the matter of Salvation; my anchor-hold is this, 'That Christ loved me, and gave himself 'for me;' that is that I rest upon.

And truly something I shall say to you as a citizen of the whole world, and in that consideration I am here condemned to die, truly contrary to the law that governs all the world, that is, the law of the sword; I had the protection of that for my life, and the honour of it, but truly I will not trouble you much with that, because in another place I have spoken very largely and liberally about it. I believe you will hear by other means what arguments I used in that case; But truly, that, that is stranger, you that are Englishmen, behold here an Englishman here before you, and acknowledged a peer, not condemned to die by any law of England: not by any law of England; nay, shad I tell you more? (which is strangest of all) contrary to all the laws of England that I know of. And truly I will tell you, in the matter of the civil part of my death, and the cause that I have maintained, I die (I take it), for maintaining the fifth commandment, enjoined by God himself, which enjoins reverence and obedience to parents: All divines on all hands, though they contradict one another in many several opinions, yet all divines on all hands do acknowledge, that here is intended magistracy and order; and certainly I have obeyed that magistracy and that order under which I have lived, which I was bound to obey; and truly, I do say very confidently, that I do die here for keeping, for obeying that fifth commandment given by God himself, and written with his own finger. And now, gentlemen, I will take this

opportunity to tell you, That I cannot imitate a better, nor a greater ingenuity than his, that said of himself, 'For suffering an unjust judgment upon another, himself was brought to suffer by an unjust judgment.' Truly, gentlemen, that God may be glorified, that all men that are concerned in it, may take the occasion of it, of humble repentance to God Almighty for it, I do here profess to you, that I did give my Vote to that Bill against the earl of Strafford; I doubt not but God Almighty hath washed that away with a more precious blood, the blood of his own Son, and my dear Saviour Jesus Christ; and I hope he will wash it away from all those that are guilty of it; truly, this I may say, I had not the least part nor degree of malice in doing it; but I must confess again to God's glory, and the accusation of mine own frailty, and the frailty of my nature, that truly it was unworthy cowardice, not to resist so great a torrent as carried that business at that time. And truly, this I think I am most guilty of, of not courage enough in it, but malice I had none; but whatsoever it was, God I am sure hath pardoned it, hath given me the assurance of it, that Christ Jesus his blood hath washed it away; and truly, I do from my soul wish, that all men that have any stain by it, may seriously repent, and receive a remission and pardon from God for it. And now, gentlemen, we have had an occasion by this intimation to remember his majesty our king, that last was; and I cannot speak of him, nor think of it, but truly I must need say, that in my opinion, that have had time to consider all the images of all the greatest and most virtuous princes in the world; and truly, in my opinion, there was not a more virtuous, and more sufficient prince known in the world, than our gracious king Charles that died last: God Almighty preserve our king that now is, his son; God send him more fortunate and longer days; God Almighty so assist him, that he may exceed both the virtues and sufficiencies of his father: For certainly, I that have been a counsellor to him, and have lived long with him, and in a time when discovery is easily enough made, for he was young, he was about 13, 14, 15, or 16 years of age, those years I was with him, truly, I never saw greater hopes of virtue in any young person than in him; great understanding, great apprehension, much honour in his nature, and truly a very perfect Englishman in his inclination; and I pray God restore him to this kingdom, and unite the kingdoms one unto another, and send a great happiness both to you and to him, that he may long live and reign among you, and that that family may reign till thy kingdom come, that is, while all temporal power is consummated: I beseech God of his mercy give much happiness to this your king, and to you, that in it shall be his subjects, by the grace of Jesus Christ.

Truly I like my beginning so well, that I will make my conclusion with it: that is, That God Almighty would confer, of his infinite and inestimable grace and mercy, to those that are

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the causes of my coming hither, I pray God give them as much mercy as their hearts can wish: and truly, for my part, I will not accuse any one of them of malice, truly I will not; nay, I will not think there was any malice in them. What other ends there are, I know not, nor will I examine; but let it be what it will, from my very soul I forgive them every one. And so the Lord of Heaven bless you all; God Almighty be infinite in goodness and mercy to you, and direct you in those ways of obedience to his commands, to his majesty, that this kingdom may be an happy and glorious nation again, and that your king may be an happy king in so good and so obedient a people. God Almighty keep you all, God Almighty preserve this kingdom, God Almighty preserve you all.

Then turning about, and looking for the executioner (who was gone off the scaffold) said, Which is the gentleman? which is the man? Answer was made, He is coming. He then said, Stay, I must pull off my doublet first, and my waistcoat; and then the executioner being come upon the scaffold, the lord Capel said, O friend! pray thee, come hither. Then the executioner kneeling down, the lord Capel said, I forgive thee from my soul, and not only forgive thee, but I shall pray to God to give thee all grace for a better life. There is five pound for thee; and truly, for my clothes, and those things, if there be any thing due to you for it, you shall be fully recompensed; but I desire my body may not be stripped here, and nobody to take notice of my body but my own servants. Look you, friend, this I shall desire of you, that when I lie down, you would give me a time for a particular short prayer.

Lieut. Col. Beecher. Make your own sign, my lord.

Capel. Stay a little. Which side do you stand upon? (speaking to the executioner;) stay, I think I should lay my hands forward that way (pointing fore-right) and answer being made, Yes, he stood still a little while, and then said, 'God Almighty bless all this people; God Almighty stanch this blood! God Almighty stanch, stanch, stanch this issue of blood! This will not do the business; God Almighty find out another way to do it.' And then turning to one of his servants, said, 'Baldwin, I cannot see any thing that belongs to my wife; but I must desire thee, and beseech her, to rest wholly upon Jesus Christ, to be contented and fully satisfied.' And then speaking to his servants, he said, 'God keep you; and, gentlemen, let me now do a business quickly, privately, and pray let me have your prayers at the moment of death, that God would receive my soul.'

Lieut. Col. Beecher. I wish it.

Capel. Pray, at the moment of striking, join your prayers; but make no noise (turning to his servants) it is inconvenient at this time.

Servant. My lord, put on your cap.

Capel. Should I? what, will that do me

good? Stay a little, it is well as it is now; as he was putting up his hair.

And then turning to the Executioner, he said, Honest man, I have forgiven thee; therefore strike boldly—from my soul I do it.

Then a Gentleman speaking to him, he said, Nay, prythee, be contented; be quiet, good Mr. ———, be quiet.

Then turning to the Executioner, he said, Well, you are ready when I am ready, are you not? And stretching out his hands, he said, Then pray, stand off, gentlemen. Then going to the front of the Scaffold, he said to the People, Gentlemen, though I doubt not of it, yet I think it convenient to ask it of you, That you would all join in prayers with me, that God would mercifully receive my soul, and that for his alone mercies in Christ Jesus. God Almighty keep you all.

*Executioner.* My lord, shall I put up your hair?

*Capel.* I, I, prythee, do. And then, as he stood, lifting up his hands and eyes, he said, O God, I do with a perfect and willing heart submit to thy will. O God, I do most willingly humble myself; and then kneeling down, said, I will try first how I can lie, and laying his head upon the block, said, Am I well now?

*Executioner.* Yes.

And then, as he lay with both his hands stretched out, he said to the Executioner, Here lie both my hands out, when I lift up my hands thus (lifting up his right hand) then you may strike.

And then, after he had said a short Prayer, he lifted up his right hand, and the Executioner at one blow severed his head from his body, which was taken up by his servants, and put, with his body, into a coffin.

Echard gives an account of Dr. Morley's\* attendance on lord Capel, of which Oldmixon makes a contemptuous contrast with that of Mr. Hodges on lord Holland. Oldmixon also severely animadverts on lord Capel's having no

Minister with him. The following transcript from bishop Morley's MS. \* shews what passed between lord Capel and him, and why lord Capel was not attended on the scaffold by a minister:

*Bishop MORLEY's Account, of the Manner of the Death of the Right Honourable ARTHUR Lord CAPEL; who was beheaded by the Rebels, March the 9th, 1649. Copied from the original Paper of that Bishop's own writing.*

A true and short NARRATIVE of the Manner of the Death of the Right Honourable the Lord CAPEL.

I went often to visit the right honourable the lord Capel a little before his Death, whilst he was a Prisoner in St. James's House in the Park, and always found him in such a temper as became an innocent and well resolved person.

The night before he was to suffer, he told me, he had a great desire to receive the Sacrament before his Death, if he might receive it from a minister of the King's party, and according to the Liturgy of the Church of England; but said withal, he feared, no such person as he would receive it from, could give it him without endangering himself, and that he was loath to endanger any man. I replied, I knew not what danger there might be in doing that Christian office to a dying man; but, was resolved (if he pleased to take it from my hands) to venture any thing that could come of it, rather than his lordship should die without that satisfaction. He seemed to be, and no doubt was, very glad of this offer of mine, and gave me many thanks for it; desiring me, that (without losing any more of the little time he had left) I would confer and pray with him, in order to his preparation for receiving the Holy Sacrament next morning.

\* "George Morley, some time chaplain to Charles 1, was a polite scholar, and an eminent divine, especially in controversy. He was, in the early part of his life, one of Ben Jonson's sons; he was also an intimate friend of lord Falkland, Mr. Hyde, Mr. Chillingworth, Mr. Waller, and others of the first eminence in the late reign. One of his excellencies, which raised him much in the esteem of all his friends, helped to degrade his character in the opinion of his enemies: this was his wit, which was natural, but uncommon; keen, but inoffensive. The very faculty was condemned by many in this age, without the least regard to its application. After the death of the king, he retired to the Hague, where he attended on Charles 2. He afterwards resided at Antwerp, where he was very assiduous in his ministerial duty. During his residence abroad, he contracted an intimacy with Rivetus, Heinsius,

Salmasius, Bochart, and other persons of rank in the learned world. Upon the Restoration, he was made dean of Christchurch, and the same year bishop of Worcester, whence he was translated to Winchester. His constant practice was to rise at five in the morning, to go to bed at eleven, and eat but once a day. By these rules he preserved his health, with very little interruption, through the course of a long life. He died October 29, 1684. His writings are chiefly on polemical subjects. In 1683, he published several treatises in a quarto volume. In the preface is a good account of the religious character of Anne Hyde, duchess of York, before her conversion to popery." Gran- ger.

\* Obligingly communicated to the Editor of the present Work by lord Capel's descendant; the earl of Essex, A. D. 1809.

I did so, and found that he could not accuse himself, of any great known sin, committed against the light of his own conscience, but one only; and that was the giving his Vote in Parliament, for the Death of my lord of Strafford; 'Which,' (said he,) I did against my 'conscience; not out of any malice to the 'person of the man; but out of a base fear' (they were his own words) 'and carried away with 'the violence of a prevailing faction; and for which' (said he) 'I have been, and am heartily sorry, and have often with tears begged, 'and (I hope) obtained pardon of Almighty 'God;' adding, 'that' (if I thought it necessary or fit) 'He would confess this great and 'scandalous sin of his, together with the cause 'of it, openly upon the Scaffold, to God's glory 'and his own shame:' which, I telling him I thought it would be ingenuously and Christianly done, of him to do, he did accordingly the next morning.

Then, having prayed again with him, I left him for that night, in a most Christian temper, to his own devout meditations.

The next morning, (at the hour agreed on between us, which was between six and seven) I came to him again, and found him ready to receive me. We went into a chamber alone together, where, after some spiritual conference suitable to the present occasion, I first prayed with him, and then he prayed himself, with very great zeal and fervor, and for others as well as for himself; nay for his enemies as well as for his friends, but especially for the King, the Kingdom and the Church. And all this with such apt and unaffected expressions, and in so regular a method, that one might easily perceive Prayer was a thing he had so often exercised, that it was grown habitual to him.

Having thus prepared himself, he did with great humility and devotion receive the Holy Sacrament, together with the earl of Norwich and sir John Owen, who were condemned to suffer with him, but are yet (thanks be to God) both living; and will live, I hope, to see justice done upon those who did condemn them.

Having received the Sacrament, and being much comforted, by it, (as finding in himself all the gracious effects of it) he was presently put to the trial of his spiritual strength, by taking his leave of the nearest and dearest relations that can be betwixt flesh and blood, and the strongest ties that a noble nature can have unto the world. For that excellent lady his wife and his eldest son, together with two of his uncles, and his nephew sir Thomas Corbett came all into the room at once (as being not permitted to do it severally) and at once assaulted him (as it were) with such passionate looks, gestures and words, bemoaning and bewailing him and themselves, (his Lady especially) with such sweet and tender expressions of love, sorrow and pity, that the greatest natural courage in the world must needs have been shaken with it, had it not been supported, (as his was) with more than

human strength and firmness. I am sure it was the saddest sight that ever I saw; and such a one as even that great courage of his could not choose, but be a little softened and melted with it, but he quickly recollected himself, and then with a cheerful countenance, told his wife and the rest, that he and they must all submit, not only with patience, but cheerfulness to the Divine Providence, which, no doubt, had and would order all things so as should be best for him and them too, though perhaps it did not yet appear to them to be so. Then, having recommended the care of his Children and Servants unto his Lady, he commanded both her and his son, as they loved him, to forgive his enemies; 'And 'though' (said he unto his son) 'I would not 'have you neglect any honourable and just 'occasion to serve your King and Country, 'with the hazard of your life and fortune, yet 'I would have you to engage yourself, (as I, 'thanks be to God for it, have done) neither 'out of desire of revenge, nor hope of reward, but out of a conscience of your duty 'only. My land' (said he) 'was so settled 'upon you by your grandfather, that no pretence of crime in me can deprive you of it: 'the best legacy I can leave you is my prayers 'for you, and a verse of David's Psalms, which 'I command you, upon my blessing, to make 'a part of your daily prayers, as I have always 'made it a part of mine, viz. "Teach me thy way O Lord, and lead me in a plain path," 'Ps. xxvii. v. 11. For I have always loved 'plainness and clearness both in my words and 'actions, and abhorred all doubling and dissimulation, and so I would have you to do also.' Then he gave him his Blessing; and, having embraced his uncles and nephew, he took his last leave of them all, not without some tears on his part, as well as many of theirs; His poor lady, being not able to support such a weight of grief, did sink under it, and was fain to be carried out from him. As soon as all were gone, and none left in the room but he and I; 'Well Doctor,' (said he) 'the hardest 'thing that I had to do here in this world is 'now past, the parting with this poor woman; 'Let us now again to our main concernment. 'I believe' (said he) 'I shall be called upon 'presently to go to the place where I am to 'take my leave of all the rest of the world, 'and, I thank my God, I find myself very well 'disposed to it, and prepared for it.' And then he told me he was in good hope that when he came to die, he should have nothing else to do but to die only. 'For' (said he) 'when I am upon the Scaffold, having made a 'Confession of my Faith, and said something 'in honour of my master that was, and for the 'service of my master that now is, I will only 'repeat the Lord's Prayer upon my knees, and 'then lay my head upon the block, desiring the 'Executioner, that upon the stretching forth of 'my right hand, (which shall be in the very act 'of recommending my soul unto my Saviour) 'he would instantly do his office,' and then he

shewed me the heads of what he meant to speak off, written with his own hand, which after he had made use of, he gave unto his servant just as he laid himself down to receive the stroke, and commanded him to deliver that Paper unto me as soon as he was dead, which he did accordingly. We had scarce made an end of reading this paper, when lieutenant colonel Beecher, the officer appointed to convey him and the other condemned lords, with sir John Owen, to the place of Execution, knocked at the door, and told him it was time for his lordship to go, whose summons he very readily and cheerfully obeyed.

Presently afterwards, Duke Hamilton, the earl of Holland, the earl of Norwich, and he, together with sir John Owen, were carried through St. James's Park in seilans, to sir Robert Cotton's House beyond the upper end of Westminster Hall, where they were all put into one room, and stayed there at least an hour before Duke Hamilton (who was ordered to die first) was carried to the place of Execution, which was upon a Scaffold just before Westminster Hall in the new palace. During the time of their stay in sir Robert Cotton's House, my lord Capel, finding his stomach a little ill, and fearing he might be worse, if he did not do then what he had for a long time accustomed himself to do daily, called me aside and asked me, whether he might not take a pipe of tobacco without scandal, saying, he was afraid it might very much discompose him if he did not; I told him I thought he might, and that in prudence he ought to do it, rather than hazard any such inconvenience at such a time when he had need to be in the best temper: whereupon duke Hamilton, and the earl of Holland, drinking each of them a little wine to comfort their spirits, he took a little tobacco to the same end also: all the time of his being there (which was at least two hours, he being the last of the three that was to be put to death) he spent either in conference with me, or in soliloquies and prayers unto God: at last, when (the other two lords being already executed) lieutenant col. Beecher came to fetch him to the Scaffold, he first took his leave of my lord of Norwich and sir John Owen, who were reprieved; giving my lord of Norwich his cane, and would have taken his leave there of me also, but I told him I would wait upon him to the Scaffold, and, if I might be suffered, do him the best service I could in assisting him in the last act of his tragedy: then, before he went out of the room, turning him to the lieutenant colonel and his soldiers (who were then, and had been his guard during his imprisonment in St. James's House) 'Gentlemen' (said he) 'I do not only from my heart forgive you, but thank you all for the kindness and civility I have found from you, and, as I forgive you, so I forgive your officers also, even those that are the authors of my death; for I verily believe that none of them do what they do out of any malice at all to me, but because I stand in the way of something

'else they have to do, which they think I must and will oppose as long as I live to the utmost of my power.' Then calling me to him, and giving me his watch to keep for a remembrance of him, 'Doctor' (said he) 'I believe they will not suffer you to accompany and assist me upon the Scaffold; but I thank God, the work, wherein I stood especially in need of your help, is done; I heartily thank God and you for it. All that I shall desire of you more, is to assist me with your prayers while I am alive, and to do the best you can to comfort my poor wife, when I am dead; and, in your prayers for me, desire Almighty God to assist me with his grace, that in this last act of my life, I may so behave myself as becomes a good Christian dying in and for so good a cause as this is; and particularly that, for the manner of my death, it may be with an humble confidence in God's mercy, and with a modest assurance of a better life, and, lastly, that I may neither say nor do any thing that may savour either of a base fear, or of a vain ostentation.'

When he had said this, he was immediately conducted by the foresaid lieutenant col. and soldiers through Westminster Hall, and betwixt the guard of soldiers which stood all along and kept off the people which thronged to see him, and who, admiring the courage and constancy that appeared in his very countenance, and mien itself, did generally commend and bless him, and prayed for him with loud exclamations as he went by them.

I followed him as far as the foot of the Scaffold, and would have gone up after him, but the lieutenant col. would not suffer me; though either of the other lords had their divines there with them, but they were Presbyterians, and I was generally known to be a Royalist and Episcopal, which was the only reason I can imagine why they would not suffer me to appear, before such a multitude of people, as an assistant at such an action; unless it were, perhaps, that they would have the people believe, that the lord Capel died indeed resolutely like an old Roman: but that the constancy and courage he shewed at his death, was but an effect of his natural temper and constitution, and not of a Christian faith and hope, or of any sense of piety, as appeared by his refusing or not caring to have a divine with him at his death; which was most false, indeed, dying for loyalty, as he did, he would not, in the last act of his life, make use of any of those ministers whom he had reason to think had been the contrivers and plotters, or, at least, the promoters and abettors of the most causeless and most horrid rebellion that ever had been in the world.

When I saw I could be no further useful to him (he having embraced me and taken his last leave of me at the foot of the Scaffold) I presently got myself out of the place, and out of the horror of that sight, which nothing

but the consideration of doing him some service could have hired me to see.

How he behaved himself afterwards upon the Scaffold, both before, and at his Death, his best friends need desire no better testimony than that which was there given him by his enemies, who could not choose but admire and applaud that virtue of his which their barbarous cruelty would not suffer the world to enjoy any longer.

Thus died that truly noble, truly valiant, truly Christian, and every way most worthy, and right honourable the lord Capel; a great example of virtue, piety and loyalty, in the midst of a most villainous, profane and rebellious generation. A man, whom the world never valued to his worth, until it grew to be unworthy of him.

(Ita testor) GEOR. MORLEY.

Though I writ this Narrative whilst things were fresh in my memory, yet I omitted one thing worthy the taking notice of by posterity, viz. that a little before he went to the Scaffold, he told me that, if I thought there were nothing of vanity or of vain ostentation in it, he would give order that his heart should be taken out of his body, and kept in a silver box, until his majesty that now is, came home, (as he doubted not but he would) and then that it might be presented unto him, with his humble desire, that where the King his father was interred,\* it might be buried at his feet, in testimony of the zeal he had for his service, and the affection he had for his person whilst he lived; which intention of his, being approved of by me, was afterwards put in execution, as far at least as it could be by him or those whom he intrusted with it. For, as soon as the king came home, (whom I had told of it whilst he was abroad) I brought sir Thomas Corbet to him, and saw him give the silver box, with that generous and loyal heart in it, to the king's own hands; what is since become of it I know not.

The following is Lord Clarendon's Account of these Transactions:

"Before they could model and finish all this," [the measures for consolidating and conducting their new government,] "and whilst it was preparing, they had, in several parts of the kingdom, terrified the people with Blood-Spectacles, in the executing many of the persons who had been taken. And that all hopes and pretences might be taken away from their subjects, the peers of England, that they should hereafter have any thing to do in declaring what the fundamental laws of the land were, a new High Court of Justice was appointed to

\* Concerning the omission of any respectful interment of the body of King Charles the First, see the Note to his Case in p. 1154, of this volume.

sit for the Trial of duke Hamilton, the earl of Holland, the earl of Norwich, the lord Capel, and another gentleman, one sir John Owen, (who, having been heretofore a colonel in the king's army, had, in a late insurrection in Wales, killed the High Sheriff) that they might see there should hereafter be no more distinction of quality in Trials for life, but that the greatest lord and the commonsers should undergo the same judicatory and form of trial. Nor could it be thought unreasonable, that all the creations of the crown should be determined by that jurisdiction to which the crown itself had been subjected.

"Duke Hamilton could not well be thought other than a Prisoner of War, and so not liable to a Trial for his Life. He had attempted to make an Escape; in which he had so well succeeded, that he was out of his enemies hands full three days; but, being impatient to be at a greater distance from them, he was apprehended as he was taking horse in Southwark; and carried Prisoner into the Tower; from whence he was brought, with the others, before that High Court of Justice. He insisted upon "The Right and Privilege of the kingdom of Scotland; that it had not the least dependence upon the kingdom of England, but was entirely governed by its own laws; that he, being a subject of that kingdom, was bound to obey the commands thereof; and the parliament of that kingdom having thought it necessary to raise an army for the relief of their king, and constituted him general of that army, it was not lawful for him to refuse the command thereof; and whatever misfortune he had undergone with it, he could not be understood to be liable to any punishment but what a prisoner of war was bound to undergo." He was told, "That the Rights and Laws of the kingdom of Scotland were not called in question, nor could be violated by their proceedings against him, who was a subject of England; against which he was charged with Rebellion and Treason: that they did not proceed against him as duke Hamilton of Scotland, but as earl of Cambridge in England, and they would judge him as such." The earl of Holland was not at that time in a good disposition of health, and so answered little, as a man that would rather receive his life by their favours, than from the strength of his defence. The earl of Norwich behaved himself with great submission to the Court, and with all those Addresses as were most like to reconcile his Judges to him, and to prevail over their affections: spoke of "his being bred up in the court from his cradle, in the time of queen Elizabeth; of his having been a servant to king James all his reign; of his dependence upon prince Harry; afterwards, upon the late king; of the obligations he had to the crown, and of his endeavours to serve it;" and concluded as a man that would be beholden to them if they would give him leave to live.

"The lord Capel appeared undaunted, and utterly refused to submit to their jurisdiction;

"that in the condition and capacity of a soldier and a Prisoner of War, he said, the lawyers and gowmsmen had nothing to do with him, and therefore he would not answer to any thing which they had said against him," (Steel having treated him with great rudeness and insolence) but insisted upon "the law of nations, which exempted all prisoners, though submitting to mercy, from death, if it was not inflicted within so many days; which were long since expired." He urged "the Declaration which Fairfax the General had made to him and the rest of the prisoners, after the death of sir Charles Lucas and sir George Lisle, that no other of their lives should be in danger, which he had witnesses ready to prove, if they might be admitted;" and concluded, "that, if he had committed any offence worthy of death, he might be tried by his peers; which was his right by the laws of the land; the benefit whereof he required." Ireton, who was present, and sat as one of his Judges, denied "That the General had made any such promise, and if he had, that the Parliament's authority could not be restrained thereby; and put him in mind of his carriage at that time, and how much he neglected then the General's civility." The other insisted still on the promise; and urged "That the General might be sent for, and examined;" which they knew not how to deny, but, in regard of his indisposition of health, they said "they would send to him, whilst they proceeded against sir John Owen, who was the other prisoner."

"He answered them without any application, "That he was a plain gentleman of Wales, who had been always taught to obey the king; that he had served him honestly during the war, and finding afterwards that many honest men endeavoured to raise forces, whereby they might get him out of prison, he did the like; and the High Sheriff endeavoured to oppose him, and so chanced to be killed; which he might have avoided if he had stayed at home:" and concluded like a man that did not much care what they resolved concerning him.

"Whether the question was well stated to Fairfax, or what was else said to him to dissuade him from owning his Declaration and promise, he boggled so much in his Answer, that they would be of opinion, "That he had not made such direct and positive promise; and that the same was never transmitted to the Parliament; which it ought to have been; and that, at most, it could but exempt those prisoners from being tried before a court or council of war, and could not be understood as an obligation upon the Parliament, not to give direction to such a legal proceeding against them, as they should find necessary for the peace and safety of the kingdom." The President Bradshaw told the lord Capel, with many insolent expressions, "That he was tried before such Judges as the Parliament thought fit to assign him; and who had judged a better man than himself." So the Sentence of Death was pro-

nounced against all five of them, That they should lose their heads; upon which sir John Owea made a low reverence, and gave them humble thanks, and being asked by a stander by, "what he meant?" he said aloud, "It was a very great honour to a poor gentleman of Wales to lose his head with such noble lords:" and swore a great oath, That he was afraid they would have hanged him.

"The Prisoners were all carried to St. James's; where they were to remain till their execution two days after; which time their friends and relations had, to endeavour to preserve their lives by the power and authority of the Parliament; where there were so many sitting who had not sat in judgment upon them, and who were of several affections, and liable to several temptations, that there might be a reasonable hope to rescue them from the cruel and unjust judgment. Their wives and children, and friends, left no way untried to prevail; offered and gave money to some who were willing to receive it, and made promises accordingly. But they who had the greatest credit, and most power to terrify others who should displease them, were inexorable; yet dealt so much more honestly than the rest, that they declared to the ladies, who solicited for their husbands and their fathers, "That they would not endeavour to do them service." Ireton, above all men, continued his insolent and dogged humour, and told them, "If he had credit, they should all die." Others, who gave better words, had no better meaning than he.

"All their Petitions were read in order, being penned in such stiles, as the friends who solicited for them were advised. Duke Hamilton's Petition being read, many, upon the motives of justice, and as they imagined his death might be the occasion of new troubles between the two nations, since Scotland could not but resent it, would have been willing he should live. But he had fewer friends to his person than any of the rest; and Cromwell knew well that his being out of the way would not be unacceptable to them upon whom the peace of that kingdom depended: so that when his Petition was read, it was rejected by very much the major part of voices. The consideration of the earl of Holland took up a long debate: the interest and interposition of the earl of Warwick, his brother, was applied; and every presbyterian, to a man, was solicitous to preserve him. They urged "His merit towards the Parliament in the beginning of the troubles; how much he had suffered in the court for his affection to them: his age and infirmities, which would not suffer him long to enjoy that life they should give him: and the consideration of his wife and children, which were numerous." But these arguments stirred up

\* This, Mrs. Macaulay, with her usual indelicacy and want of exactness, thus repeats, "The thick-skulled Welchman made a low reverence, and told the court, &c."

others to inveigh against his backslidings with the more bitterness, and to undervalue the services he had ever done; to tax his vanities and his breach of faith. When the question was put concerning him, they who were for the negative, exceeded the number of the other by three or four votes; Cromwell having more than an ordinary animosity against him, for his behaviour in the beginning of the summer, and for some words of neglect and contempt he had let fall concerning himself. The earl of Norwich came next upon the stage; who having always lived a cheerful and jovial life, without contracting many enemies, had many there who wished him well, and few who had animosity against him; so that when the question was put concerning him, the house was equally divided, the votes which rejected his Petition, and those which would preserve his life, were equal: so that his life or death depended upon the single vote of the Speaker; who told the house, 'That he had received many obligations from that lord; and that once when he had been like to have incurred the king's displeasure, by some misinformation, which would have been very penal to him, the lord Goring (under which stile he was treated, the additional of Norwich not being allowed by them upon their old rule,)' had by his credit preserved him, and removed the prejudice that was against him; and therefore he was obliged in gratitude to give his vote for the saving of him.' By this good fortune he came to be preserved; whether the ground of it were true or no, or whether the Speaker made it only as an excuse for saving any man's life who was put to ask it in that place.

'The lord Capel, shortly after he was brought prisoner to the Tower from Windsor Castle, had by a wonderful adventure, having a cord and all things necessary conveyed to him, let himself down out of the window of his chamber in the night, over the wall of the Tower; and had been directed through what part of the ditch he might be best able to wade. Whether he found the right place, or whether there was no safer place, he found the water and the mud so deep, that, if he had not been by the head taller than other men, he must have perished, since the water came up to his chin. The way was so long to the other side, and the fatigue of drawing himself out of so much mud so intolerable, that his spirits were near spent, and he was once ready to call out for help, as thinking it better to be carried back again to the prison, than to be found in such a place, from whence he could not extricate himself, and where he was ready to expire. But it pleased God, that he got at last to the other side; where his friends expected him, and carried him to a chamber in the Temple, where he remained two or three nights secure from any discovery, notwithstanding the diligence that could not but be used to recover a man they designed to use no better. After two or three days a friend whom he trusted much, and who deserved to

be trusted, conceiving that he might be more secure in a place to which there was less resort, and where there were so many harboured who were every day sought after, had provided a lodging for him in a private house in Lambeth Marsh; and calling upon him in an evening, when it was dark, to go thither, they chose rather to take any boat they found ready at the Temple stairs, than to trust one of that people with the secret; and it was so late that there was one only boat left there. In that the lord Capel, as well disguised as he thought necessary, and his friend, put themselves, and bid the water-man row them to Lambeth. Whether, in their passage thither the other gentleman called him my lord, as was confidently reported, or whether the water-man had any jealousy by observing what he thought was a disguise, when they were landed, the wicked water-man, undiscerned, followed them, till he saw into what house they went; and then went to an officer, and demanded, 'what he would give him to bring him to the place where the lord Capel lay?' And the officer promising to give him ten pounds, he led him presently to the house, where that excellent person was seized upon, and the next day carried to the Tower.

'When the Petition that his wife had delivered, was read, many gentlemen spoke on his behalf; and mentioned the great virtues which were in him; and 'that he had never deceived them, or pretended to be of their party; but always resolutely declared himself for the king;' and Cromwell, who had known him very well, spoke so much good of him, and professed to have so much kindness and respect for him, that all men thought he was now safe, when he concluded, 'that his affection to the public so much weighed down his private friendship, that he could not but tell them, that the question was now, whether they would preserve the most bitter and most implacable enemy they had: that he knew the lord Capel very well, and knew that he would be the last man in England that would forsake the royal interest; that he had great courage, industry, and generosity; that he had many friends who would always adhere to him; and that as long as he lived, what condition soever he was in, he would be a thorn in their sides; and therefore for the good of the commonwealth, he should give his vote against the petition.' Ireton's hatred was immortal: he spake of him, and against him, as of a man of whom he was heartily afraid. Very many were swayed by the argument that had been urged against duke Hamilton, 'that God was not pleased that he should escape, because he had put him into their hands again, when he was at liberty.' And so, after a long debate, though there was not a man who had not a value for him, and very few who had a particular malice, or prejudice towards him, the question being put, the negative was more by three or four voices; So

that, of the four lords, three were without the mercy of that unmerciful people. There being no other petition presented, Ireton told them, 'there had been great endeavours and solicitations used to save all those lords; but that there was a commoner, another condemned person, for whom no one man had spoke a word, nor had he himself so much as petitioned them; and therefore he desired, that sir John Owen might be preserved by the mere motive, and goodness of the house itself;' which found little opposition, whether they were satiated with blood, or that they were willing, by this instance, that the nobility should see that a commoner should be preferred before them.

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*Court.* Sir, What do you say, Are you Guilty or Not Guilty? This is the second time you have been asked: Sir, if you will not answer the third time, we shall know what to do. Are you Guilty or Not Guilty?

cuits this Lent, and for completing the number of Judges in the several Courts, and voted, That the King's Bench Court should be called the Upper Bench.—An Act passed for some amendments in their Commissions, and for a new Oath to be given them, 'well and truly to serve the Commonwealth in the office of a Justice of the Upper Bench, &c. according to the best of their skill and knowledge.'

"June 1. Upon a Report from the Commissioners of the Great Seal, of the Names of fit persons to be Judges, and Barons of the Exchequer, the House voted, 'That Serjeant Nicholas and Mr. Ask be Judges of the Upper Bench. That Serjeant Puleston and Peter Warburton, esq. be Judges of the Common Pleas. That Serjeant Thorp and C. Rigby be barons of the exchequer. And that the Commissioners of the Seal do grant them patents accordingly.'

Whitelocke has left us the Speech which he made on the swearing in of Puleston and Warburton, on the 12th of June. Clement Walker, speaking of the transactions relative to the Judges, says, "Instructions were given by the Commons for drawing new Commissions for the Judges, according to the new Antimonarchical stile and way, the new Great Seal being now ready, a Committee of the House met the Judges about it: whereof six agreed to hold upon a provision to be made by Act of the House of Commons, 'That the Fundamental Laws be not abolished.' This very provision, so made by Act of the Commons, (beside all their former Votes against Monarchy, Peerage, altering in the stile of Writs, Coinage of Money, &c.) is itself an abolition of the Fundamental Laws. This is but a Fig-leaf to cover their shame. Those that held were, Of the King's Bench, Mr. Justice Rolls, &c. &c. Those who quitted their places, and kept their consciences, were, Justice Bacon, &c. &c."

It appears from Whitelocke, under date March 10th, 1649, that the salary of a Judge was 1,000*l.* per ann.

† Clement Walker, in his 'History of Independency,' relates this Proceeding thus:

"August 16th, 1649. Colonel Morrice (who kept Pontefract Castle for the King) was indicted before Judge Thorpe and Puleston, at York assizes, upon the statute 25 Edw. 3, for levying War against the late King and Parliament. The colonel challenged one Brook (foreman of the jury) for being his professed enemy; but the Court (knowing Brook to be the principal verb, the key of their work) answered Morrice, he spake too late; Brook was sworn already. Brook being asked the question, Whether he were sworn or no? re-

*Morrice.* My lords, I still conceive I ought not to be tried here; if I have done any thing worthy of death, I appeal to a martial Court, to my lord Fairfax, major-general, or a general Council of War: you have not any precedent for it, either for you to try me in this way, or me to suffer by it.

plied, he had not yet kissed the book. The Court answered, It was no matter; that was but a ceremony, alledging, he was recorded 'Sworn;' there was no speaking against a record. Sure they made great haste to record him 'Sworn,' before he could kiss the book. So Brook was kept in upon this cavil, by whose obstinacy Morrice was condemned. I cannot wonder that legal forms and ceremonies are laid by (although Justice cannot subsist without those legalities to ascertain her proceedings, which otherwise would be left at large to the discretion of the Judge) when I see our known laws, Magna Charta, the Petition of Right, 3 Car. and the rest, with the fundamental government of this nation, pulled up by the roots, to carry on their designs of enslaving the people to their lusts, notwithstanding the Parliament's declarations, remonstrances, protestations, covenants, and oaths, to the contrary, and their late vote in the Act for Abolishing Kingly Government. That in all things concerning the lives, liberties, properties, and estates of the people, they would observe the known laws of the land. But to return to our relation: Then Morrice challenged sixteen more of the Jury, where Puleston was so pettish, that he bade Morrice keep his compass, or else he would give him such a blow as should strike off his head; until Morris cited the statute 14 Hen. 7, folio 19, whereby he might challenge thirty-five men without shewing cause. Here you see the Judges (who ought to be of counsel with the prisoner in matter of law) endeavouring to outface and blind the prisoner with ignorance of the law, being a martial man. Then he desired a copy of his Indictment, that he might know what to answer, saying, he might plead special as well as general; which the Court denied him. Next, because there was a point of law in it, he desired to have Counsel, citing the statute 1 Hen. 7, folio 23; which was likewise denied him. Yet I am deceived, if Rolfe had not Counsel allowed him, being indicted at Winchester, for an endeavour to murder King Charles 1, and had many other favours, denied to Morrice. Then col. Morrice, for his discharge, produced the Prince's commission, as Generalissimo to the King his father. The Judges answered, The Prince was but a subject as Morrice was, and, if he were present, must be tried, as he was, and rejected the commission without reading. Morrice told them, the Prince had his authority from the King, in whose name all Judges and Officers did then act. The Court answered, The power was not in the King, but the Kingdom. Observe, they indicted him for Levying War against the King

*Court.* Are you Guilty or Not Guilty? This is the third time.

*Morris.* My lords, If your honours will force me to plead, I conceive I am Not Guilty.

*Court.* How will you be tried?

and Parliament. The word 'Parliament' was a surplusage, for which no indictment could lie. No Allegiance, no Treason; and we owe allegiance to the King alone. Whosoever levith war in England (in the intendment of the law) is said to levy war against the King only, although he aim not at his person, but at some other person; and if he that levith war against the King, his crown, and dignity, be a traitor, how much more must they be traitors, that have actually murdered the King, and disinherited and proscribed his lawful and undoubted Heir, and, as much as in them lies, have subverted the monarchical government of the land, and consequently all monarchical laws, whereof the Statute of Treasons for Levying War against the King's Majesty is one; and therefore Morrice, under a free state, ought not to be condemned or tried upon any monarchical law. So Morrice was found guilty by a Jury for that purpose, and an illegal precedent begun, to cut off whom the Faction pleaseth, under a pretence and form of law, without help of a council of war, or a private slaughter-house, or a midnight coach, guarded with soldiers to Tyburn. These usurpers have got the old tyrannical trick, 'To rule the people by the laws, but first to over-rule the laws by their lawyers;' and therefore, 'Ut rei innocentes perant, fiant nocentes iudices;' that true men may go to the gallows, thieves must sit on the bench. But, 'Silent leges inter arma;' and now, 'Silet justitia inter leges, silet jus inter iudices.' The mungrel, hypocritical, three-headed conquest we live under hath despoiled Justice of her balance, and left her in a military posture, with a sword to strike, but no scales to weigh withal. Our licensed news-books, like ill-boding birds, fore-told and fore-judged Morrice's death a month before 'He died resolutely.' Observe the thing aimed at in this new form of Indictment of High Treason, for Levying War against the King and Parliament, is, first, That the word 'King' may hold in the Indictment, which otherwise would be found to have error in it; and though the words 'for Levying War against the Parliament,' be a vain surplusage, signifying nothing, yet at last (by help of their own Judges and new-made Presidents) to levy War against the Parliament shall stand alone, be the only significator, and take up the whole room in the Indictment, and thrust the word 'King' out of doors, and then Treason shall be as frequent as Malignancy is now. Morrice had moved, 'he might be tried, like a Soldier, by a Council of War,' alledging the inconveniency of such a precedent, if the King's party should retaliate it, which would not be granted; yet Colonel Bethel wrote to the General, and his Council of War, desiring he might be reprieved;

*Morris.* My lords, I was never at any bar before, I am ignorant herein.

*Court.* Tell him what to say. [Upon that, some near him, told him, By God and his Country.]

but Colonel Pride opposed it, urging, 'That it would not stand with the justice of the Army,' (you see now who is the fountain of Justice) 'nor the safety of the Commonwealth, to let such enemies live, the Parliament having adjudged him worthy of death,' (without hearing) 'and given instructions to the Judges accordingly.' (O serviceable Judges!) So the General was overborne by this Drayman. This fellow sitteth frequently at the sessions-house in the Old Bailey, where the weight of his slings turneth the scale of Justice which way he pleaseth."

Lord Clarendon gives the following history of the Transactions at Pontefract, in which col. Morris or Morrice had so great a share :

"When the parliament had finished the war, they reduced and slighted most of the inland garrisons, the maintenance whereof was very chargeable; yet by the interest of some person who commanded it, or out of the consideration of the strength and importance of the place, they kept still a garrison in Pontfret Castle, a noble royalty and palace belonging to the crown, and then part of the queen's jointure. The situation in itself was very strong; no part whereof was commanded by any other ground: the house very large, with all offices suitable to a princely seat, and though built very near the top of a hill, so that it had the prospect of a great part of the West Riding of Yorkshire, and of Lincolnshire, and of Nottinghamshire, yet it was plentifully supplied with water. Colonel Cotterell, the governor of this castle, exercised a very severe jurisdiction over his neighbours of those parts; which were inhabited by many gentlemen, and soldiers who had served the king throughout the war, and who were known to retain their old affections, though they lived quietly under the present government. Upon the least jealousy or humour, these men were frequently sent for, reproached, and sometimes imprisoned by the governor in this garrison; which did not render them the more devoted to him. When there appeared some hopes that the Scots would raise an army for the relief and release of the king, sir Mar-maduke Langdale, in his way for Scotland, had visited and conferred with some of his old friends and country-men, who now lived quietly within some distance of Pontfret, who informed him of that garrison, the place whereof was well known to him. And he acquainting them with the assurance he had of the resolution of the principal persons of the kingdom of Scotland, and that they had invited him to join with them, in order to which he was then going thither, they agreed, 'that, when it should appear that an army was raised in Scotland upon that account, which must draw down the par-

*Morris.* By God and my Country. (After that, challenge is made for col. Morris to except against any of the jury.) [Mr. Brooke, a great man for the Cause, comes first returned, to be sworn as Foreman of the Jury.]

*Morris.* My lords, I except against this Brooke.

*Court.* Sir, he is sworn, and you speak too late.

liament's army into the other Northern counties, and that there should be risings in other parts of the kingdom' (which the general indisposition and discontent, besides some particular designs, made like to fall out) 'that then those gentlemen should endeavour the surprise of that castle, and after they had made themselves strong in it, and furnished it with provisions to endure some restraint, they should draw as good a body to them as those countries would yield:' and having thus adjusted that design, they settled such a way of correspondence with sir Marinduke, that they frequently gave him an account, and received his directions for their proceeding. In this disposition they continued quiet, as they had always been; and the governor of the castle lived towards them with less jealousy, and more humanity, than he had been accustomed to.

"There was one colonel Morrice, who, being a very young man, had, in the beginning of the war, been an officer in some regiments of the king's; and out of the folly and impatience of his youth, had quitted that service, and engaged himself in the parliament army with some circumstances not very commendable; and by the clearness of his courage, and pleasantness of his humour, made himself not only very acceptable, but was preferred to the command of a colonel, and performed many notable services for them, being a stout and bold undertaker in attempts of the greatest danger; wherein he had usually success. After the new modeling of the army, and the introducing of a stricter discipline, his life of great licence kept not his reputation with the new officers: and being a free speaker and censurer of their affected behaviour, they left him out in their compounding their new army, but with many professions of kindness, and respect to his eminent courage, which they would find some occasion to employ, and reward. He was a gentleman of a competent estate in those parts in Yorkshire; and as he had grown elder, he had heartily detested himself for having quitted the king's service, and had resolved to take some reasonable opportunity to wipe off that blemish by a service that would redeem him: and so was not troubled to be set aside by the new general, but betook himself to his estate; enjoyed his old humour, which was cheerful and pleasant; and made himself most acceptable to those who were most trusted by the parliament; who thought that they had dismissed one of the best officers they had, and were sorry for it.

"He now, as a country gentleman, frequent-

*Morris.* My lord, I appeal to himself, whether he be sworn or no.

*Brooke.* Sir, I am not to answer you, but the Court. My lord, I did not kiss the book.

*Court.* Sir, that is no matter, it's but a ceremony.

*Morris.* My lords, I beseech your honours that I may except against him; I know him, as well as I know my right hand, to be my enemy.

ed the fairs and markets, and conversed with equal freedom with all his neighbours, of what party soever they had been, and renewed the friendship he had formerly held with some of those gentlemen who had served the king. But no friendship was so dear to him, as that of the governor of Pontefract castle, who loved him above all men, and delighted so much in his company, that he got him to be with him some times a week and more at a time in the castle, when they always lay together in one bed. He declared to one of those gentlemen, who were united together to make that attempt, 'that he would surprise that castle, whenever they should think the season ripe for it:' and that gentleman, who knew him very well, believed him so entirely, that he told his companions, 'that they should not trouble themselves with contriving the means to surprise the place; which, by trusting too many, would be liable to discovery; but that he would take that charge upon himself, by a way they need not enquire into; which he assured them should not fail: and they all very willingly acquiesced in his undertaking; to which they knew well he was not inclined without good grounds. Morrice was more frequently with the governor, who never thought himself well without him; and always told him 'he must have a great care of his garrison, that he had none but faithful men in the castle; for that he was confident there were some men who lived not far off, and who many times came to visit him, had some design upon the place:' and would then in confidence name many persons to him, some whereof were those very men with whom he communicated, and others were men of another temper, and were most devoted to the parliament, all his particular friends and companions; 'but that he should not be troubled; for he had a false brother amongst them, from whom he was sure to have seasonable advertisement;' and promised him, 'that he would, within a few hours notice, bring him at any time 40 or 50 good men into the castle to reinforce his garrison, when there should be occasion;' and he would shew him the list of such men, as would be always ready, and would sometimes bring some of those men with him, and tell the governor before them, 'that those were in the list he had given him of the honest fellows, who would stick to him when there should be need;' and others would accidentally tell the governor, 'that they had listed themselves with colonel Morrice to come to the castle, whenever he should call or send to them.' And

*Clerk of Assize.* Sir, he is recorded sworn, there is no disputing against the Record.

*Morris.* My lords, I must submit to your honours. (After that col. Morris challenged 16 men, and my lord Puleston, thinking col. Morris tedious in excepting against so many, answered, Sir, Keep within your compass, or I

all these men thus listed, were fellows very notorious for the bitterness and malice which they had always against the king, not one of which he ever intended to make use of.

"He made himself very familiar with all the soldiers in the castle, and used to play and drink with them; and when he lay there, would often rise in the night, and visit the guards; and by that means would sometimes make the governor dismiss, and discharge a soldier whom he did not like, under pretence 'that he found him always asleep,' or some other fault which was not to be examined; and then he would commend some other to him as very fit to be trusted and relied upon; and by this means he had very much power in the garrison. The governor received several letters from his friends in the parliament, and in the country, 'that he should take care of col. Morrice, who resolved to betray him;' and informed him, 'that he had been in such 'and such company of men, who were generally esteemed most malignant, and had great 'intrigues with them;' all which was well known to the governor; for the other was never in any of that company, though with all the shew of secrecy, in the night, or in places remote from any house, but he always told the governor of it, and of many particular passages in those meetings; so that when these letters came to him, he shewed them still to the other; and then both of them laughed at the intelligence; after which Morrice frequently called for his horse, and went home to his house, telling his friend 'that though he had, 'he knew, no mistrust of his friendship, and 'knew him too well to think him capable of 'such baseness, yet he ought not for his own 'sake be thought to slight the information; 'which would make his friends the less careful 'of him: that they had reason to give him 'warning of those meetings, which, if he had 'not known himself, had been very worthy of 'his suspicion; therefore he would forbear 'coming to the castle again, till this jealousy 'of his friends should be over; who would 'know of this, and be satisfied with it:' and no power of the governor could prevail with him, at such times, to stay; but he would be gone, and stay away till he was, after some time, sent for again with great importunity, the governor desiring his counsel and assistance as much as his company.

"It fell out, as it usually doth in affairs of that nature, when many men are engaged, that there is an impatience to execute what is projected before the time be thoroughly ripe. The business of the fleet, and in Kent, and other places, and the daily alarms from Scot-

will give you such a blow as will strike off your head.)

*Morris.* My lords, I desire nothing but justice; for by the statute of 14 Hen. 7, fol. 19, I may lawfully challenge 35 men, without shewing any cause to the contrary.

*Court.* It is granted.

land, as if that army had been entering the kingdom, made the gentlemen who were engaged for this enterprise, imagine that they deferred it too long, and that though they had received no orders from sir Marmaduke Langdale, which they were to expect, yet they had been sent, and miscarried. Hereupon they called upon the gentleman who had undertaken, and he upon Morrice, for the execution of the design. The time agreed upon was such a night, when the surprisers were to be ready upon such a part of the wall, and to have ladders to mount in two places, where two soldiers were to be appointed for sentinels who were privy to the attempt. Morrice was in the castle, and in bed with the governor, and, according to his custom, rose about the hour he thought all would be ready. They without, made the sign agreed upon, and were answered by one of the sentinels from the wall; upon which they run to both places where they were to mount their ladders. By some accident, the other sentinel who was designed, was not upon the other part of the wall; but when the ladder was mounted there, the sentinel called out; and finding that there were men under the wall, run towards the court of guard to call for help; which gave an alarm to the garrison: so that, for that time, the design was disappointed. But, shortly after, Morrice, and some of the same gentlemen, surprized the castle, under the disguise of country-men coming in with carts of provision; and presently seized on and mastered the main guard, and made way for their friends, horse and foot, to enter. Then two or three of them went to the governor's chamber, whom they found in his bed, and told him 'the Castle was surprized, 'and himself a prisoner.' He betook himself to his arms for his defence, but quickly found that his friend had betrayed it, and the other gentlemen appearing, of whom he had been before warned, his defence was to no purpose, yet he received some wounds. Morrice afterwards comforted him with assurance 'of good 'usage, and that he would procure his pardon 'from the king for his rebellion.'

"They put the garrison in good order, and so many came to them from Yorkshire, Nottingham, and Lincoln, that they could not in a short time be restrained, and had leisure to fetch in all sorts of provisions for their support, and to make and renew such fortifications as might be necessary for their defence. From Nottingham there came sir John Digby, sir Hugh Cartwright, and a son and nephew of his, who had been good officers in the army, with many soldiers who had been under their command; many other gentlemen of the three

lords, I can make it appear, I have acted only for the king, and nothing against him, which may appear here by my Commission.

The Court looks upon it, and answers,

*Court.* Sir, you are deceived, this is false, it is from the Prince.

*Morris.* My lords, it is very well known, my lord Fairfax hath his Commission derived from the Parliament, and upon that he grants Commission to his Officers, which is all one and the same. The Prince hath his from his father, and I have mine from the Prince, which is full power, he being Captain General of his majesty's forces.

*Court.* Sir, have you nothing else to say?

*Morris.* My lords, under correction, I conceive it is sufficient; for by the same power, all Judges, Justices of Peace, your lordships, your predecessors, and all other officers, did act by the same power, and all process and writs of law were acted, and executed in his name, and by his authority.

*Court.* His power was not in him, but the kingdom, for he was in trust for the kingdom; the king's highway, and the king's coin being so called; is not his own, but his subjects; and his natural power, and legal power, are different.

*Morris.* My lords, under correction, I conceive his legal and personal power are undivisible, all one, and cannot be separated.

*Court.* Sir, all is one; if the king bid me kill a man, is this a sufficient warrant for me to plead? No, Sir, it is unlawful. Sir, have you no more?

some of their own lives in the two former sallies to save theirs. The buildings of the castle were very large and spacious, and there were great stores of waste stones from some walls, which were fallen down. They found a convenient place, which was like to be least visited, where they walled up their two friends in such a manner that they had air to sustain them, and victual enough to feed them a month, in which time they hoped they might be able to escape. And this being done, at the hour appointed they opened their ports, and after Lambert had caused a strict inquisition to be made for those six, none of which he did believe had in truth escaped, and was satisfied that none of them were amongst those who were come out, he received the rest very civilly, and observed his promise made to them very punctually, and did not seem sorry that the six gallant men (as he called them) were escaped. And now they heard, which very much relieved their broken spirits, that sir Marmaduke Langdale had made an escape out of the castle of Nottingham; who shortly after transported himself beyond the seas. Sir John Digby lived many years after the king's return, and was often with his majesty. Poor Morris was afterwards taken in Lancashire, and happened to be put to death in the same place where he had committed a fault against the king, and where he first performed a great service to the parliament."

*Morris.* I beseech your honours give me leave, I am upon my life.

*Court.* Speak what you will, Sir, you shall be heard.

*Morris.* Your servant, my lord; then my lords, I conceive I have acted nothing against the Parliament, for that which I acted, it was for the king: and since the abolishing of regal power, I have not meddled with any thing against the parliament, for that Act was but enacted the 14th of July last, and before that time and Act of abolishing Kingly Government, that princely palace which I kept by his Commission was demolished. My lords, I beseech your honours, that my Commission may be read, to give satisfaction to the Court.

*Lord Puleston.* Sir, it will do you no good, you may as well shew a Commission from the Pope, all is one.

*Morris.* My lords, I desire your lordships to do me that justice.

*Lord Thorpe.* For my part I am willing, if my brother be not against it.

*Lord Puleston.* Sir, we hold it for law to be void, it is to no purpose.

*Morris.* Then if your lordships be not pleased to do me that justice that it may be read, I desire it may be restored me again. [Upon that, col. Morris received his Commission unread.] My lords, it seemeth strange, that your honours should do that which was never done the like before, never any of your predecessors ever did the like; I wish it may not be to your own and your friends wrong, that you make yourselves precedents of your acting, and myself of suffering. But, my lords, I do not speak for saving my own life, for (I thank my God) I am prepared, and very willing to part with this lump of clay: I have had a large time of repentance, it being twenty-two weeks since my imprisonment; and I am sorry for those which are like to undergo the same sufferings, if your lordships take away my life. And though I do not speak any way in glory, indeed at this present there is a cloud hanging over our heads, I desire there may be a fair sunshine to dispel it. And though there were a world of plots in the kingdom when I took the castle, there is not wanting the same now, only the time is not yet come; and as I was to be the fire-brand to Scarborough, so he (meaning Bointon) to Tinnmouth, and that to others; and though you take away my life, there will be others which will take up the lintstock to give fire, though I be gone.

*Court.* Sir, you have little hopes to talk of any fire to be given here, having received such a total rout in Ireland.

*Morris.* My lords, I should have been unwilling to have contradicted your late news concerning Ireland; but since you have given me a hint of it, you must give me leave to let your honours know, that I received letters from the marquis of Ormond, dated the 3rd of Aug. and your's is but the 2d; wherein he pleases to let me understand of the great care he hath of me, and that whatsoever shall befall me here, the like shall be to those which he hath pri-

soners there, which, as he saith, are good store. Therefore if your lordships did not at all value my person, yet methinks you should have some care of it for your own friends good.

*Court.* Sir, have you no more to say?

*Morris.* My lords, still I appeal to my Commission, which I conceive is sufficient to defend me withal, in what I have done, notwithstanding your power to the contrary.

*Court.* It is nothing at all, we have power to try you here.

*Morris.* Then, my lords, under correction, laymen may as well be tried at a Martial Court: which if granted, those excellent acts of Magna Charta, and the Petition of Right, would be destroyed.

*Court.* But you are not looked on here as a soldier; we shall do what in justice belongs to us.

*Morris.* My lords, still, under correction, I have taken the Oath of Allegiance, and I conceive in that I was bound to do as much as I did or have done, though I had not had any commission at all. And I beseech your lordships that you will do me justice, and not incline to the right-hand of affection, or the left to hatred; but to have an ear for the accused as well as for the accuser: neither have I acted any thing contrary to my allegiance, which allegiance I was willing to pay to the son, as well as to the father. Now for the allegiance, I owe to any person or authority but to these, I know none.

*Lord Thorpe.* Sir, if you have any thing else to say, speak for yourself, for this is not much to the purpose.

*Morris.* My lord, it is true, since you have rejected that authority which I acted by, I might as well have held my tongue at the first, and spake nothing, were it not for the satisfaction of the hearers; but if it must be so, that you will make me a precedent, you must do with me as you did with my dear and honoured lord [meaning my lord of Strafford] making an Act for the future, that this my suffering shall not be a precedent to any soldiers hereafter. Besides, my lord, this same Statute which you allege against me is, if that any shall act against the king, it is Treason; which I have not done; but contrary, for him, and by his authority. And there is an Act of 11 H. 7, cap. 1. 'That whosoever they are that shall aid or assist the King at home or abroad, shall not be questioned at all.'

*Lord Thorpe.* It is true, sir, but Hen. 7, then stood in a fickle condition, and being an Usurper, made that Act for his own safety; sometimes the duke of York ruling, sometimes the duke of Lancaster, and others contending, therefore it was enacted.

*Morris.* My lord, but this same Act of H. 7, was later than that of Ed. 3, which you have laid against me; and as yet was never repealed, until this last Act of 14th of July, before which time I had delivered up the place.

*Lord Thorpe.* Well, sir, it seems you have not any more to say.

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After he had answered, the Court commanded irons to be laid on them. (Corney Blackston being condemned at the same time.)

*Morris.* My lord, I humbly desire that we may not be manacled; if you make any doubt of us, that we may have a greater guard upon us.\*

*Lord Puleston.* Sir, you that have made such attempts through such guards, as were of purpose set to receive you, ought to be looked to now. Yet, if Mr. Sheriff please, I am content.

*Morris.* Mr. Sheriff, I desire that this manacling may be forborn: if you please to clap a guard of an hundred men upon us, I shall pay for it. This is not only a disgrace to me, but in general to all soldiers; which doth more trouble me than the loss of my life. Mr. Sheriff, what do you say?

*Mr. Sheriff.* Sir, irons are the safest guards.

*Morris.* My lords, hitherto, I thank God, I have not done any unsoldiery or base act, and to begin now, I will not do it to save my life; and though you look upon me Sampson-wise, I vow to God, I would not touch the pillars, though it lay in my power to injure you; therefore I still beg pardon, that I may not be manacled.

*Under-Sheriff.* Come, sir, it cannot be helped, we are commanded.

*Morris.* My lord, I beseech you grant me this favour; it is not my life I beg, but to forbear this manacling, which shame and dishonour doth more trouble me, than the loss of my life.

*Under-Sheriff.* It must be done.

And upon that, did it, and carried him away. After dinner, the Jury brought in their verdict, Guilty of Treason.†

\* As to prisoners being in irons at their Trial or Arraignment, see the ninth Resolution preparatory to the Trials of the Regicides, A.D. 1660 [*infra*.]

† "Letters from York, that one Morris, and one Blackston, were arraigned before Baron Thorpe, and Judge Puleston, for levying War against the Kingdom; they pleaded Not Guilty, but desired, 'as they were martial men, that they might be tried by martial law:' which was denied them. Morris at last said, 'He would be tried by God and the Country,' and seventeen Witnesses proved foul crimes against him. He had two sheets of paper written with matters of Law, and Statutes, many of which he pleaded, and urged the cause of the War betwixt the two Houses of York and Lancaster, the difference of which from his case was shewed by the Judges. Then he produced a Commission from the King when he was Prince; the Judges told him, that the Prince was a Subject as well as he, and must be tried by the same law. He was found guilty of Treason, and manacled with irons: at which he said, 'What, a martial man ironed? The like precedent was never before known.' He desired to have a strong guard, saying, 'Let me be damned if I escape;' but it was denied, so

*Morris.* My lord, I am here found guilty of Treason by that villain Brooke, whom I know to be mine enemy, and the first man that I did except against: in which I conceive I have received hard measure, for none could have found me guilty of Treason, had they gone according to the letter of the law, which they did not.

*Lord Puleston.* Sir, you speak too late, you are not to dispute it now.

*Morris.* Neither would I, my lord, if this were a Court of Chancery, but being a Court of Law, bound up in express words and letter, I conceive I ought to dispute it, and my business better weighed.

*Lord Puleston.* Well, sir, you are found guilty, therefore hold your peace.

*Morris.* If I must suffer, I receive it with all alacrity and cheerfulness, and I thank God I shall die for a good cause, and the testimony of a good conscience; for which, had I as many lives as there are stars in the firmament, I would sacrifice them all for the same.

*Court.* Sheriff, gaoler take them away.

*Morris.* Well, I beseech God bless king Charles, and fight for all those that fight for him, or have fought for him.

After he was condemned, col. Bethel writ to the General and his Council of War, that *Morris* might be reprieved; but col. *Pride* opposed it, urging, "That it would not stand with the justice of the Army, nor the safety of the Commonwealth, to let such enemies live, the Parliament having adjudged him worthy of death, and given instructions to the Judges accordingly."

The SPEECH of Colonel John Morris, Governor of Pontefract Castle, at the place of Execution at York, August 23, 1649.

When he was brought out of prison, looking upon the sledge that was there set for him, lifting up his eyes to heaven, knocking upon his breast, he said, 'I am as willing to go to my death, as to put off my doublet to go to bed; I despise the shame as well as the cross; I know I am going to a joyful place:' with many like expressions. When the post met him about St. James's church, that was sent to the Parliament to mediate for a reprieve; and told him he could not prevail in it, he said, 'Sir, I pray God reward you for your pains, I hope, and am well assured to find a better pardon than any they can give: my hope is not in man, but in the living God.'

At the place of Execution he made this profession of his faith, his breeding, and the cause he had fought in.

"Gentlemen, First I was bred up in the true Protestant Religion, having my education and breeding from that honourable house, my

was a copy of his Indictment, and to have counsel, or to be exchanged. He and Blackston were both condemned." Whitlock, p. 421. Edit. 1732.

dear lord and master Strafford's, which place, I dare boldly say, was as well-governed and ruled as ever any yet was before it; I much doubt, better than any will be after it, unless it please God to put a period to these distracted times; this faith and religion, I say, I have been bred in, and I thank God I have hitherto lived in, without the least wavering, and now I am resolved by God's assistance to die in.

"These pains are nothing, if compared to those dolours and pains, which Jesus Christ our Saviour hath suffered for us; when in a bloody sweat he endured the wrath of God, the pain of hell, and the cursed and shameful death which was due to our sins; therefore I praise the Lord that I am not plagued with far more grievous punishment; that the like hath befallen others, who undoubtedly are most glorious and blessed saints with Christ in heaven. It is the Lord's affliction, and who will not take any affliction in good part when it comes from the hand of God? And what, shall we receive good from the hands of God, and not receive evil? And though I desire, as I am carnal, that this cup may depart from me, yet not my will, but thy will be done. Death brings unto the godly an end of sinning, and of all miseries due unto sin: so that after death there shall be no more sorrow, nor cry, nor pain, for 'God shall wipe away all tears from our eyes;' by death our souls shall be delivered from thralldom; and this 'corruptible body shall put on incorruption,' and this mortal immortality."

"Therefore blessed are they that are delivered out of so vile a world, and freed from such a body of bondage and corruption; the soul shall enjoy immediate communion with God in everlasting bliss and glory; it takes us from the miseries of this world, and the society of sinners, to the city of the living God, the celestial Jerusalem.

"I bless God I am thought worthy to suffer for his name, and for so good a cause; and if I had a thousand lives, I would willingly lay them down for the cause of my king, the Lord's anointed; the Scripture commands us to fear God and honour the king, to be subject to every ordinance of man for the Lord's sake; whether to the king as supreme, or to those that are in authority under him. I have been always faithful to my trust: and, though I have been most basely accused for betraying Liverpool; yet I take God to witness, it is a most false aspersion, for I was then sick in my bed, and knew not of the delivering of it, till the officers and soldiers had done it without my consent, and then I was carried prisoner to sir John Meldrum. Afterwards I came down into the country, and seeing I could not live quietly at home, I was persuaded by col. Forbes, col. Overton, lieut. col. Fairfax, whom I took for my good friends, to march in their troops: which I did, but with intention still to do my king the best service when occasion was, and so I did: and I pray God to turn the hearts of all the soldiers to their lawful sovereign, that this land may enjoy peace, which till then it

will never do: and though thou kill me, yet will I put my trust in thee; wherefore I trust in God he will not fail me nor forsake me."

Then he took his Bible, and read divers Psalms fit for his own occasion and consolation, and then put up divers prayers, some publicly and some privately: the public was this which follows:

"Welcome blessed hour, the period of my pilgrimage, the term of my bondage, the end of my cares, the close of my sins, the bound of my travels, the goal of my race, and the haven of my hopes; I have fought a long fight in much weakness; I have finished my course though in great faintness; and the crown of my joy is, that through the strength of thy grace, I have both kept the true faith, and have fought for my king, the Lord's anointed's cause, without any wavering; for which, and in which I die; I do willingly resign my flesh, I despise the world, and I defy the devil, who hath no part nor share in me. And now what is my hope? my hope, Lord Jesus, is even in thee: for I know that thou my Redeemer livest, and that thou wilt immediately receive my soul, and raise up my body also at the last

day, and I shall see thee in my flesh with these eyes, and none other. And now, O Lord, let thy spirit of comfort help mine infirmities, and make supplication for me with sighs, and groans that cannot be expressed; I submit myself wholly to thy will; I commit my soul to thee as my faithful Redeemer, who hast bought it with thy most precious blood. I confess to all the world, I know no name under heaven by which I may be saved, but thine my Jesus, my Saviour; I renounce all confidence in any merits save thine; I thankfully acknowledge all thy blessings; I unfeignedly bewail all my sins: I stedfastly believe all thy promises; I heartily forgive all my enemies: I willingly leave all my friends: I utterly loath all earthly comforts, and I entirely long for thy coming. Come Lord Jesus, come quickly; Lord Jesus receive my spirit."

The private were to himself, his hat being before his eyes. After this, he put up divers short ejaculations: As, "I know my Redeemer liveth: Father into thy hands I commend my spirit, for thou hast redeemed it, O God, thou God of truth: Lord Jesus receive my spirit:" and many of the like; and so he yielded to Death.

## 186. The Trial of Lieutenant-Colonel JOHN LILBURNE,\* at the Guildhall of London, for High Treason: 1 CHARLES II. A. D. 1649.

THE Commissioners Names of the extraordinary Commission of Oyer and Terminer, for the Trial of Lieutenant-Colonel John Lilburne, follow:

Thomas Andrews, Lord-Mayor.  
Richard Keble, Lord-Commissioner.  
Philip Jermin, Justice of the Upper Bench.  
Thomas Gates, Baron.  
John Paleston, Justice of the Common-Pleas.  
Francis Thorp, Baron and Member.  
Robert Nicolas, Member, Richard Aske, Justices of the Upper Bench.  
Peter Warburton, Justice of the Common-Pleas.  
Alexander Rigby, Baron; but absent.  
Serjeants at Law;—John Green, John Clark, John Parker.  
William Steel, Recorder.  
Henry Proby, Common Serjeant.  
Aldermen;—John Fowke, Thomas Foote, John Kendrick, Thomas Cullum, Simon Edmonds, Samuel Avery, John Dethicke, Robert Titchburn, John Hayes.  
Sir Tho. Fowler, Edward Rich,  
Sir Henry Holcroft, Owen Roe,  
Sir Wm. Row, Tobias Lisle,  
Sir Rd. Saltonstall, Austin Wingfield,  
Sir Rd. Sprignall, Richard Downton,  
Sir John Wooliston, Daniel Taylor,  
Sir Wm. Roberts, Wm! Wibend,  
Thomas Brigandine, Silvanus Taylor,  
Nathaniel Snape,

*At the Guild-Hall of London, the 21th of October 1649, being Thursday, at the Trial of Lieut. Col. JOHN LILBURNE.*

O Yes made; all persons that were adjourned to the Court, required to make their appearance.

The Lieutenant of the Tower of London, col. Francis West, called to bring forth his prisoner, according to the precept.

Whereupon he brought up the Prisoner out of the Irish Chamber, where he had been some time before the sitting of the Court, and was guarded by the said Lieutenant, and a special guard of soldiers besides. And being brought to the bar, the Sheriffs of London were directed to take the Prisoner into their custody.

Silence commanded.

*Cryer.* John Lilburne, hold up thy hand.

Lieutenant-Col. *Lilburne* directed himself to Mr. Keble, one of the Keepers of the Great Seal, as the President of the Court, and said to this purpose: Sir, will it please you to hear me? and if so, by your favour thus. All the privilege for my part that I shall crave this day at your hands, is no more but that which is properly and singly the liberty of every free-born Englishman,† viz. The benefit of the Laws

\* See his Case in the Star-Chamber, A. D. 1637, ante, v. 3, p. 1315.

† Lilburne, it seems, had obtained the appellation of "Free Born John." In 1 Thurloe's

and Liberties thereof, which by my birth-right and inheritance is due unto me; the which I have fought for as well as others have done, with a single and upright heart; and if I cannot have and enjoy this, I shall leave this Testimony behind me, That I died for the Laws and Liberties of this nation; and upon this score I stand, and if I perish I perish. And if the fact that I have done, cannot be justified by the law of England, let me perish. I mention none of this for the gaining of mercy, or by way of merit; no, I scorn it: for mercy I crave from none, but from the hands of my God alone, with whom I hope, and am assured one day to rest; whom I have set before my eyes, and so walked, as believing I am always in his presence, in whose power my confidence is fixed, whom I take and own to be my stay, my staff, my strength and support, and in whom I rest as the life of my life, and whom I hope to meet with joy, when this fading and uncertain life shall have an end, to live with him in glory and blessedness for ever more. And therefore because I would not willingly trouble you with many words, to cause you to spend your time impertinently; therefore, Sir, in reference to the Court I shall crave but so much liberty from you as was given to Paul when he pleaded for his life before the heathen Roman Judges, which was free Liberty of Speech to speak for himself; the which I now humbly crave as my right, not only by the law of God and man, but also by the Law and light of nature. And I shall do it with that respect, reason and judgment, that doth become a man that knows what it is to plead for his life. I hope God hath given me ability to be master of my own passion, and endowed me with that reason, that will dictate unto me what is for my own good and benefit.

I have several times been arraigned for my life already. I was once arraigned before the house of peers for sticking close to the Liberties and Privileges of this nation, and those that stood for them, being one of those two or three men, that first drew their swords in Westminster-Hall against col. Lunsford and some scores of his associates. At that time, it was supposed, they intended to cut the throats of the chiefest men then sitting in the House of Commons: I say, for this, and other things of the like nature, I was arraigned by the king's special command and order, the 1st of May 1641. I mention it to this end, that when I came before the House of Peers, where was about three or four-score lords then sitting at the beginning of the Parliament, (who then were supposed the most arbitrary of any power in England) yet I had from them free Liberty of Speech, to speak

for my life at their bar, without check or controul, in the best manner all these abilities God had given me would enable me. And when I was at Oxford, I was again arraigned as a Traitor before the Lord Chief Justice Heath, for levying War at the command of the then Parliament against the person of the king: And when I came before him in the Guild-Hall of Oxford, he told me (there being present with him, as his fellow-judge, Mr. Gardiner, sometimes recorder of the city of London, now sir Thomas Gardiner,\* and others that sat by a special commission of Oyer and Terminer from the king; the which Commission I did not so well then understand, as I hope I do now:) And my Lord Chief Justice Heath stood up, and in the face of all the Court, and in the face of all the country present there, told me; Capt. Lilburne, you are brought here before us for High-Treason, for levying War in Oxfordshire against your sovereign lord and king; and though you be now in a garrison, and were taken in arms in open hostility against the king, (yea Sir, and I must now tell you, in such hostility, that we were but about 700 men at Brentford, that withstood the King's whole Army in the field above five hours together, and fought it out to the very sword's point, and to the butt-end of the musket; and thereby hindered the King from his then possessing the Parliament's train of artillery, and by consequence the City of London, in which very act I was taken a prisoner, without Articles or Capitulation, and was by the King and his party then looked upon as one of the activest men against them in the whole company) yet said Judge Heath, we will not take advantage of that, to try you by the rules of arbitrary Martial laws, or any other arbitrary ways; but we will try you by the rules of the good old laws of England: and whatsoever privilege in your Trial the laws of England will afford you, claim it as your birth-right and inheritance, and you shall enjoy it with as much freedom and willingness, as if you were in Westminster-Hall, to be tried amongst your own party. And this we will do for that end, that so at London your friends shall not have any just cause to say, we murdered you with cruelty, or denied you the benefit of the law, in taking away your life by the rules of our own wills. Nay, further said he, Capt. Lilburne, it is true I am a judge, made by my sovereign lord the king, according to his right by law, [See the 87 of Hen. 8, c. 24.] and so in a special manner am his servant and counsellor, and am to act for his good, benefit, and advantage: And yet notwithstanding, it is by the known laws of this land my duty to be indifferent and free from partiality betwixt my master and you the Prisoner, and I am specially bound unto it also by my oath. And therefore you shall have the utmost Privileges of the Law of England, which is a law of mercy, and not of rigour, and hath the life of a man in tenderest and highest estimation: [See the 2nd

State Papers, 320, is an intercepted Letter, dated June 27, 1653, and signed Lovell, containing this passage "Free Born John is turned to the sessions in the Old Bailey, and, I believe, will speedily be hanged." See his Trial in July 1653, *infra*. See, too, 7 Rushw. Coll. Dec. 1647, 844, in the margin.

\* See his Case, *ante*, p. 167.

part Inst. fol. 28, 30, 42, 43, 53, 315, 316, 391. & part 3. fol. 34.] And therefore it is the duty of a judge by law, to be of Counsel \* with the prisoner, in things wherein by his ignorance he falls short of making use of the benefit of the law, especially when he is upon the trial of his life. Yea, and to exhort him to answer without fear, if he perceive him daunted or amazed at the presence of the court. Yea, it is my duty to carry myself with all fairness and evenness of hand towards you; and wherein that there shall seem any mistakes to appear, in circumstances or formalities, to rectify you: for it is my duty to help you, and not to use any boisterous or rough language to you in the least, to put you in fear, or any ways prevent the freedom of your defence; and according to the laws of England this is my duty, and this is the law. And accordingly he gave me liberty to plead to the errors of my indictment, before I ever pleaded Not Guilty; Yea and also became willing to assign me what counsel I pleased to nominate, freely to come to prison to me, and to consult and advise with me, and help me in point of law. This last he did immediately upon my pleading to the indictment before any fact was proved; all which is consonant to the declared judgment of sir Edward Coke, that great oracle of the laws of England, whose books are published by special Orders† and authority of parliament for good law; who in his third part of his Institutes, chap. of High Treason, fol. 29, 36. compared with fol. 137, 230, asserts the same.

Truly, Sir, I being now come before you to answer for my life, and being no professed lawyer, may through my own ignorance of the practical part of the law, especially in the formalities, niceties, and punctilios thereof, run myself with over-much hastiness in snares and dangers, that I shall not easily get out of. And therefore being all of a sudden bid to hold up my hand at the bar, I cannot chuse but a little demur upon it, and yet with all respect to you, to declare my desirableness to keep within the bounds of reason, moderation, and discretion, and so to carry myself as it doth become a man, that knows what it is to answer for his life.

And therefore in the first place, I have something to say to the court about the first fundamental liberty of an Englishman in order to his trial; which is, That by the laws of this land all courts of justice always ought to be free and open for all sorts of peaceable people to see, behold and hear, and have free access unto; and no man whatsoever ought to be tried in holes or corners, or in any place, where the gates are shut and barred, and guarded with armed men: and yet, Sir, as I came in, I found the gates shut and guarded, which is contrary both to law and justice.

Sir, the laws of England, and the privileges

\* See the Note to the Case of Don Pantaleon Sa. *infra*.

† "Which Orders are dated May 12, 1641, and June 3, 1642. You may at large read at the last end of his Instit. part 2." Orig. Edit.

thereof, are my inheritance and birth-right, and, Sir, I must acquaint you, that I was sometimes summoned before a committee of parliament, where Mr. Corbet, and several others have had the chair; and there I stood upon my right by the laws of England, and refused to proceed with the said committee, till by special order they caused their doors to be wide thrown open, that the people might have free and uninterrupted access to hear, see and consider of what they said to me; although I think the pretence that I am now brought before you for, be the very same in substance, that I was convened before Mr. Corbet for, which was about books: and I am sure there I did argue the case with him and the rest of the committee, soundly out in law; proving that they were bound in law and justice freely to open their doors, for the free access of all sorts and kinds of auditors: and I did refuse (as of right) to proceed with them, till by special order they did open their doors. For no trial in such cases ought to be in any place, unless it be public, open and free; and therefore if you please that I may enjoy that legal right and privilege which was granted unto me by Mr. Miles Corbet, and the rest of that committee, (when I was brought before them in the like case that now I am brought before you) which privilege I know to be my right by the law of England; I shall, as it becomes an understanding Englishman (who in his actions hates deeds of darkness, holes or corners) go on to a trial. But if I be denied this undoubted privilege, I shall rather die here than proceed any further. And therefore foreseeing this before-hand, and being willing to provide against all jealousies of my escape, the fear of which I suppose might be objected against me as a ground to deny me this my legal right; and therefore before hand I have given my engagement to the Lieutenant of the Tower, that I will be a faithful and true prisoner to him.

And I hope the gentleman hath so much experience of my faithfulness to my word, that he doth not in the least question or scruple it; I am sure he hath often so declared to me that he doth not.

Nay, I have not only engaged to be a true prisoner in the Tower to him, but I have also solemnly engaged to him, that I will come civilly and peaceably with him, and that I will go civilly and peaceably back with him again: and that if any tumult or uproar shall arise in the crowd, of which I lose him, and be me: or in case I should be any ways by force and power rescued from him, I have also faithfully engaged to him, that I will come again to him (by the assistance of God) as soon as ever I can get away from that force or rescue. And all this I entrusted him to acquaint you with, that all jealousies and disputes might be avoided.

Judge *Kelr.* Mr. Lilburne, look behind you, and see whether the door stands open or no.

LT. COL. *Lilburne.* Well then, Sir, I am satisfied as to that. But then in the next place,

I have read the Petition of Right, I have read Magna Charta, and abundance of laws made in confirmation of it; and I have also read the 'Act that abolisheth the Star Chamber,' which was made in the year 1641, which last recited Act expressly confirms those statutes that were made in Edward the Third's time, which declares all acts, laws and statutes that were made against Magna Charta, to be null and void in law, and holden for error.

In the reading of which laws I do not find a special Commission of Oyer and Terminer to be legal and warrantable. I beseech you, sir, do not mistake me; for I put a vast difference between an ordinary and common Commission of Oyer and Terminer for holding ordinary and common assizes and sessions, and betwixt an extraordinary and special Commission of Oyer and Terminer to try an individual person or persons, for a pretended extraordinary crime. The laws I last recited, and the fundamental or essential basis of freedom therein contained, knows no such names or commissions of special Oyer and Terminer.

And those statutes in Edward the First, and Edward the Third's time, that do erect those special and extraordinary Commissions, and warrant the usage of them, are merely irrational (a) innovations upon our indubitable rights contained in Magna Charta, and mere court and prerogative devices to destroy the best of men, by extraordinary courts appointed to prejudice proceedings that should manfully stand in the way of the prince, or any of his great favourites; for sure I am from the Petition of Right, no ground or foundation from any extraordinary or special Commission of Oyer and Terminer, upon any pretended, special, or great occasion, cannot be founded; but rather the absolute quite contrary, as to me clearly appears by the very plain letter of that most excellent law. And therefore such a special Commission upon any pretended special occasion, being expressly against our indubitable rights contained in Magna Charta, and the Petition of Right, viz. That no Englishman shall be sub-

jected to any other trial, but the ordinary, universal and common trials at ordinary assizes, sessions or gaol-deliveries, and not in the least to be tried by extraordinary and special prejudged, packed, over-awing Commissions of Oyer and Terminer; and therefore all such extraordinary and dangerous trials are absolutely abolished, by the late excellent acts that confirm the Petition of Right, and all and every the clauses therein contained, and abolisheth the Star Chamber, both made anno 1641.

And, Sir, with your favour, the then parliaments that made the last cited laws, were so far from countenancing any special commissions of Oyer and Terminer, upon any special or pretended great occasions whatsoever that I can read of, that I rather find and read the parliament's proceedings in the year 1641, an extreme out-cry of the house of commons against special commissions of Oyer and Terminer, with a great deal of bitterness and vehemency, as may fully and clearly be read in that excellent argument of Mr. Hyde, April 1641, printed and published in a book, called "*Speeches and Passages of Parliament*," p. 409 to 417, which I have here at the bar to produce; which Mr. Hyde was then the special and appointed mouth of the house of commons before the lords, who unto them in conformity to his commission from the then house of commons, complains to the house of lords extremely of a special commission of Oyer and Terminer that was exercised in the five northern counties of England; and earnestly, in the name of the house of commons, craves the special assistance of the house of lords to pluck up that court by the very roots, founded upon a special commission of Oyer and Terminer, being so illegal and unjust in the very foundation of it, as it is inconsistent with the people's liberties, and as that which destroyed and disinherited all the people that were tried, both of their birth-right and inheritance, viz. their liberties and freedoms contained in Magna Charta. And this, Sir, was the declared and avowed judgment and opinion of the house of commons in April, 1641, in their primitive purity and non-defilement, when they acted bravely and gallantly for the universal liberties and freedom of this nation (and not self-interest) when they were in the virginity of their glory and splendour, as he there fully and most excellently declares; and yet he there gives an extraordinary reason for the original erection of that court, founded upon a special commission of Oyer and Terminer, as can be rendered.

The original reason or occasion of which, he there declares to be thus: That by reason of the suppression of the abbies in the 27th of Hen. 8's time, in the north of England, through discontent thereat, there did arise from the said 27th year to the 30th no fewer than six grand insurrections, most of them under the command of some eminent man of those countries; which insurrections and rebellions occasioned the levying of great armies, which had like to have set the whole kingdom in an uni-

(a) "And excellent to this purpose is Lieutenant-Colonel Lilburne's Argument, in his 2d edition of his '*Picture of the Counsel of State*,' p. 8, against the erection of extraordinary Courts, which thus followeth: He granting that the Parliament hath power to erect a Court of Justice to administer the law, provided that the Judges consist of persons that are not Members of Parliament; and provided the power they give them be universal, that is to say, to administer the law to all the people of England indefinitely, who are all equally born free alike, and not to two or three particular persons solely; the last of which for them to do is unjust, and altogether out of their power, &c. Which Argument or Reason is most notably illustrated and enlarged in the 3d edition of the '*Legal Fundamental Liberties of England*, revived of the 8th of June, 1649,' p. 72." Orig. Edit.

versal flame: for the suppressing and preventing of which in future times, king Henry 8, caused a special court to be erected, by a special commission of Oyer and Terminer; which court also continued in Edward 6th's time, queen Mary's, and first and second of King James: The basis of which commission was founded upon those forementioned innovating statutes made in Edw. 2nd's and Edw. 3rd's time (b): Which special commission of Oyer and Terminer was several times renewed by the late king Charles, as in the 5th, 8th, and 13th year of his reign. And the said Mr. Hyde there in his argument or speech, which I have here in print, names several of the precedents of that illegal court of special commission of Oyer and Terminer: And he there also declares in what an extraordinary manner, and upon what an extraordinary occasion it was granted; which was so great, as that a greater could not be imagined: and yet notwithstanding he declares, that this extraordinary commission, which being granted to suppress and quiet those many extraordinary insurrections and rebellions, which do not admit of so long a delay as times of ordinary trial, in times of peace, when the ordinary, legal, and common courts of justice are open and free, will do, when peace and quiet is in the nation, as now it is; and yet for all that, he condemns it for illegal.

And therefore, Sir, admit my actions in their tendency to be as dangerous and heinous as any of my adversaries can imagine or declare them to be; yet they are but in the ashes, but in the hearth, they are not broke out into visible and violent hostile actions. And therefore I say, if special commissions of Oyer and Terminer, granted in such special and transcendent cases as those in Henry 8's time, were illegal; much more must a special commission of Oyer and Terminer granted to try me barely for words, or at most for pretended writings or books, at such a time when there is no burning flame of insurrections or rebellions in the kingdom, but all in visible peace, and all the ordinary courts of justice open: and I and my friends have often sought to enjoy the benefit of the law in a legal trial, from first to last, but could never enjoy it in the least measure, although many assizes and sessions have passed over my head since my first commitment, now seven months ago; at the first of which, in the county where my pretended crime was committed, I ought by law and justice either to be tried or acquitted. So that, Sir, by what I have already said, you may see the judgment and opinion of the house of commons upon special commissions of Oyer and Terminer, in their first purity, when as a full house, there being constantly 400 or 500 of them sitting in the house, as the deputed and chosen trustees of the people of England, whose opinion was to damn them, and pluck them up by the roots,

(b) "Which were Westminster the second being the 13 of Ed. 1, c. 29, and 2 Ed. 3, c. 2, and 34 Ed. 3, c. 1." Orig. Edit.

as unjust and illegal in their original institution, which they have accordingly done, and declared to the whole nation in the act that abolished the Star-Chamber; where that court spoken against by Mr. Hyde, is totally damned and plucked up by the roots. So that now in law I cannot see how special commissions of Oyer and Terminer, can be legal at this present, admit the power never so just from whom it comes; but abundantly much more, seeing there is no actual wars, nor popular insurrections: which, if lately there had been any, and yet were overcome, there is no pretence or ground by the good old laws of England, for any extraordinary proceedings against any man, although he had been in arms against you, but he ought to have the benefit of the ordinary, accustomed, and common trials at the common law, as clearly appears by the express words of the Petition of Right (c). But I was never in any hostile manner against those that are the present governors of the nation, but have been under their command in several battles in the nation, and have hazarded my life for them, and never yet in the least changed my original or first principles; nor never was engaged in the least in any hostility against them, but have always, since I five years ago gave over my command, lived in peace and quietness in mine own house and abode: and was the same day at the house of commons door that their votes passed against me, declaring me in general (which in law signifies nothing) to be a Traitor; and spake with a gentleman that is now a judge amongst yourselves (viz. Mr. Rigby) at the house-door, who, in some Great Ones names, proffered me large matters, if I would do as I should be directed by them. After this, I went home to mine own house in Southwark, where I stayed in peace and quietness, well enough knowing the votes that that day passed against me, without either particular accusation or accuser, or any such thing; where I stayed, whereas I might easily have escaped the hands of mine enemies, and been gone: but having the sweet peace of a good conscience within me, which did assure me that I had done nothing that was against the welfare of the nation of England in general, nor against the welfare of any one particular man in England, but really wished it well, and all its well-wishers:

I say that, notwithstanding my certain knowledge of all that at the house had passed against me; and although I also knew that the further design against me, which was, That the Council of State (as they are called) would take me away thereupon with armed force the next morning; yet notwithstanding all this, I stirred not out of my house, but remained there till about five o'clock the next morning; at which

(c) "Of which Judgment Sir Edward Coke is positively, in part 2 Instit. f. 48, and part 3, f. 52, in Tho. Earl of Lancaster's Case, which is singular well worth the reading. See also part 1 Instit. f. 15." Orig. Edit.

time 200 or 300 armed horse and foot (without so much as one civil or magisterial officer with them) came by force of arms, and hauled me out of bed from my wife and children, not according to the law of England, as is expressly provided in two several statutes, viz. the first of Edw. 6, chap. 12, and the 5th and 6th of Edw. 6, c. 11. By which rules of the law, and no other, they ought to have proceeded against me from first to last; and I am sure they both expressly provide, That if any man be accused of Treason, that he shall be accused first to one of the king's counsel, or to one of the king's justices of assize, or else to one of the king's justices of the peace being of the *Quorum*, or to two justices of the peace within the shire where the same offence or offences shall happen to be done or committed (*d*).

But contrary to these and other wholesome and good laws, although there hath been an eight years war in England, pretendingly, for the preservation of the laws and liberties of England, yet, I say, contrary to the express tenor of these laws, as also of the Petition of Right, yea, and also of the express letter of that excellent law that abolished the Star-Chamber this parliament, was I by force of arms, that never fortified my house against the present power, nor ever disputed any of their summons, though sent by the meanest man that ever appertained to them; and who, if they had sent their warrant for me by a child, I would have gone to them, I was fetched out of my bed in terror and affrightment, and to the subversion of the laws and liberties of England, and led through Loudons-areets with hundreds of armed men (like an Alger-captive) to their main-guard at Paul's, where a mighty guard staid for the further conducting me by force of arms to White-Hall. Now, Sir, If I had committed treason, I ought not to have been apprehended and proceeded against by armed and mercenary soldiers, but by civil and magisterial officers, and no other; according to those excellent privileges that the parliament themselves in the year 1641, in their own book of Declarations, p. 36, 37, 76, 77. did claim for those six members, viz. the lord Kimbolton, Mr. Pym, Mr. Hollis, Mr. Stroud, sir Arthur Haslerig, and Mr. Hampden: I say and aver, I ought to have had the process of the law of England, due process of law according to the forementioned statutes and precedents; for I never forcibly resisted or contended with the parliament; and therefore ought to have had my warrant served upon me by a constable, or the like civil officer; and upon no pretence whatsoever, ought I to have been forced out of my bed and house by mercenary armed officers and soldiers. But, Sir, coming to White-hall, I was there

also kept by armed men, contrary to all law and justice; and by armed men against law, I was by force carried before a company of gentlemen sitting at Derby-House, that looked upon themselves as authorized by the parliament to be a committee or Council of State, (who by the law I am sure in any kind had nothing at all to do with me in cases of pretended treasons) where I was brought before Mr. John Bradshaw, sometimes a counsellor for myself before the house of lords, against my unjust Star-Chamber judges; who there in my behalf, Feb. 1645, did urge against the lords of the Star-Chamber, as the highest crimes against the liberties of the people that could be, as being illegal, arbitrary and tyrannical, that the lords in Star-Chamber should censure me to be whipped, pilloried, &c. for no other cause but for refusing to answer their interrogatories against myself. And when I was brought before the said Council of State I saw no accuser, no prosecutor, no accusation, no charge nor indictment; but all the crime that there was laid unto my charge, was Mr. Bradshaw's very seriously examining me to questions against myself; although I am confident he could not forget, that himself and Mr. John Cook were my counsellors in February, 1645, at the bar of the house of lords, where he did most vehemently aggravate, and with detestations condemn the lords of the Star-Chamber's unjust and wicked dealing with English freemen, in censuring them for their refusing to answer to questions concerning themselves; and yet notwithstanding walked with his dealing with me in the very steps that formerly he had bitterly condemned in the Star-Chamber-lords; yea, and there for refusing to answer his questions, (for any thing he declared to me to the contrary) committed me to prison for treason in general. And you know very well, better than I do, that by your own law, generals in law signify nothing.

Judge *Jermyn*. Mr. Lilburne, you very much abuse and wrong yourself, for you very well know Mr. Bradshaw is now denominated by another name, namely, Lord President to the Council of State of England; and it would well become you in your condition so to have stiled him.

*Lilburne*. And although no crime in law (which ought to be particularly expressed) was laid unto my charge; yet when I was first imprisoned, there were thousands of my friends (well-wishers to the freedoms of England, and to the common cause in which they had been engaged in for these eight years together) both old and young, both masters of families, young men and apprentices, and abundance of others of the feminine sex too, with abundance of cordial honest men in several countries, joined in several rational and fair petitions, and delivered them to the house in the behalf of myself, and my three fellow-prisoners; in which they most earnestly intreated them, that they would not prejudge us before we were heard, and knew our accusers and accu-

(*d*) "See also to this purpose, part 3 of Coke's Instit. ch. 'High Treason,' f. 26; 27, 38; and part 1 Parl. Declar. in the Case of the Lord Kimbolton and the five Members, p. 38, 39, 76, 77." Orig. Edit.

sations, but rather that they would release us, and take off their prejudging votes against us, which they had caused to be proclaimed in all the public places of the nation against us, and let us have a fair and legal trial, according to the laws of England, and according to the undeniable privileges of the due process of the law from first to last; and they would put in any security, that they would require of them, that we should be forth-coming at all times to answer whatsoever in law could be laid to our charge. Unto all which petitions, which were very many, they could get no manner of satisfying answer, but slights, abuses, and scorns.

But besides this, gentlemen, that you may see that I am rational, and that you may see that I have an innocent and quiet conscience within me, that does not accuse me, nor terrify me; therefore I must acquaint you, that I again and again proffered my chiefest adversaries, and sent often to them, being earnestly desirous to chuse two members of the house of commons, and let them chuse two more, whom they please; and I would with all my heart freely refer all manner of difference betwixt them and me, to the final determination and judgment of four of their fellow-members: but all this would do no good, and yet they would not in the least let me understand what was the thing they desired of me; but, by their power and will, I had my pockets and chamber searched to find out advantages against me; and also locked up close prisoner, with centinels night and day set at my door, and denied the access and sight of my wife and children for some certain time; and for about twenty weeks together in the heat of summer, kept close prisoner, and denied the liberty of the prison, and my estate with a strong hand taken away from me, without any pretence, or due process of law, to the value of almost 3,000*l.*, that was legally and justly vested in me, and in my possession. But being I will avoid (at this time especially) provocations as much as I can, I will name no person by whose power and will it hath been done, although he be notoriously known; but the gentleman that took it away by his pleasure, without all rules of law or justice, told my father to this purpose, That I was a traitor, and under the parliament's displeasure: and therefore he would secure it from me, although I were not in the least convicted of any crime, neither in law then, or for many months after had I the least pretence of crime laid unto my charge. And although my own estate by force, against law, was taken from me, yet was I also denied in my close imprisonment that legal allowance that should have kept me alive; for in all this miserable condition I never yet received a penny of my legal allowance, but was positively denied that testimony and legal right that the late king constantly allowed to all the members of the parliament that were committed in the third of his reign, and several other times; unto whom for their diet he allowed 3, 4 and 5*l.* a week,

according to their quality, although they had great and large estates peaceably in their possession. And one of them that is now beyond the seas, a colonel, I have forgot his name, (but it was colonel Long) confessed in the lieutenant of the Tower's own chamber, the last year, that the king was so bountiful to him and the rest of his fellow-prisoners, that he let them enjoy the allowance of about 4 or 5*l.* a week for diet; and that while he was prisoner in the Tower, he spent the king about 1,500*l.* for his own particular self in provision. But, notwithstanding I was denied all this, and to fill up the height of the insufferable provocations put upon me, abundance of my own and ancient acquaintance were set upon me to calumniate, bespatter and reproach me; yea, and to endeavour to become instruments to take away my life, some of them confessing they were underhand set on by some parliament-men: all whose base and wicked petitions, papers and books preferred and published against me, were hugged and embraced; although, for my own part, I do not know of any man in this world that can justly tax me with any action, or maintaining any principles or tenets, but what doth become a man that doth believe all that is contained in the law and the gospel, and does believe the resurrection of the dead, and life eternal; nay, that does believe that I myself shall rise and go to the Lord of Glory. Yet notwithstanding all these unparalleled provocations put upon me, especially by divers of my old acquaintance, whom I had upon all occasions faithfully served, but never wronged, injured nor provoked, being instigated, as they themselves confess in some of their own congregations, by parliament-men so to do.

Truly, Sirs, I appeal to your own judgments, and to your consciences, and to all the people that hear me this day, whether all these provocations laid upon a poor man, which is but dust and ashes, as well as other men, be not too insupportable a burden, and too much for the causers of them to take advantage of the fruits produced by them, to destroy me, and take away my life.

And therefore, Sir, in the first place, I shall humbly crave that favour and right, seeing I am brought before you by a piece of parchment that truly I could not read, neither could he do it that shewed me, (I mean the lieutenant of the Tower;) for admit that if I did well understand Latin, as indeed I do not, only some ordinary words, yet it was in such an unusual strange hand that I could not read it. And therefore being I am brought before you implicitly, and not as I conceive an Englishman ought to be, who ought to see and read the authority, by virtue of which he is convened before any power. It is true, I know some of you, gentlemen, that I see sit before me, yet not many of you; and truly I have nothing but a piece of unlegible parchment, which cannot satisfy my understanding of the legality of my convention before you: but being I am not able to dispute that power that compulsively

brought me, but here I am; and therefore in order to the declaring of myself to be a true Englishman, I most humbly crave, and that I think is consonant to reason, and I hope to law too, that I may see, and hear read the commission, by virtue of which you sit here this day, and convene my person before you, that so I may compare it to the law; and consider whether or no, that by my pleading before you by virtue of it, I do not betray my liberties. And therefore I humbly crave that you would let me hear your commission read; for this court is no ordinary and common assizes, sessions, or gaol-delivery, the only proper courts for trying me for all criminal faults; yea, and those also ought to sit where the crimes are committed: and I was imprisoned for a pretended crime, pretended to be committed in the county of Surry, where by the common law of England, and express statutes, I ought to be tried therefore, and no where else.

And therefore being brought in an extraordinary manner to such an extraordinary place as this, which is no ordinary assizes or sessions, no nor yet in mine own county; therefore I again humbly desire that you will be pleased to let me see and hear your extraordinary commission, that so I may consider whether the extent or latitude of the commission be consonant, or no, to the Petition of Right, and other the good old laws of England. For those that now sit at Westminster, exercising the supreme power, by two special declarations, the one dated the 9th of February last, and the other the 17th of March last, have positively declared, and called God to witness, That they will maintain, preserve, and defend that most excellent of laws, the Petition of Right, as in the seventh page of the last declaration they call it; and that the people of England shall enjoy all the benefit therein contained, whether, to life, liberty, or estate, with all things incident thereunto. And therefore I humbly beg and crave that favour from you, that seeing to me you appear to be sent in an extraordinary manner, not according to the ordinary customs of the laws of England, that you will be pleased to let me hear your commission read, that so I may consider the consonancy thereof to the Petition of Right, and other the good old laws of England: and after the reading of it, I hope I shall return you an answer as doth become a rational and ingenious man: who though he hath right to all the privileges of the laws of England, and hath read all the declared and plain laws of England, that are to me the fundamentals of all, yet the practice part of the law, which are in other tongues besides the English, I cannot read, know, nor understand. And in the Petition of Right, and other the good old fundamental laws of England, I can find no foundation or bottom for such an extraordinary court, as this before my eyes seems to be: and therefore I again make it my most humble suit to hear your commission read.

Judge *Kelle*. Mr. Lilburne, you are fully heard.

Mr. *Prideaux*, (Attorney-General). My lord, the prisoner at the bar, nor none else, have cause to complain that he hath wanted your patience in being fully heard. My lord, that which at the beginning of his arraignment you expected from him, which was to hold up his hand, he denied; and upon his denial desired liberty of speech to speak, and he hath enjoyed it. But, my lord, how pertinent his discourse is to what was proposed to him, the court, and all that hear him, will judge. My lord, I am not here to justify the actings of those that here he hath complained against; but they are a court, they are a council, and my thoughts are (and so ought his to be) honourable of them; and what they have done, my lord, towards him, in ordering this court to try him, is but justice. My lord, there is no special commission of Oyer and Terminer, but a general commission: and upon that general commission here is a special presentment of Mr. Lilburne here at the bar: the general commission is according to the law of the land; and upon that special presentment it is expected he may be proceeded against according to law. And for your commission, my lord, that hath been read and published to the court before Mr. Lilburne came to the court, and the court is satisfied with it, that it is in the ordinary way; and I hope the judgment you will give, will declare it to be according to the law, in the ordinary way. And as for the commission itself, in the form of it, it is not a little varied from the ordinary accustomed form. But, my lord, the Petition of Right, Magna Charta, the statutes, and all declarations that have been spoken of, they are all confirmed in this, and all do confirm it; for in that ordinary tract, that hath been practised in this nation for 500 years, is Mr. Lilburne now to be tried, and that by the good old laws of England, Mr. Lilburne's birth-right, and every man's else, he has his trial; the beginning of which hath been Mr. Lilburne's presentment, which is already found by the grand inquest, who are men of integrity, men of ability, men of knowledge. My lord, he is now come to his trial, not in an extraordinary way, but by a jury of good and legal men of the neighbourhood; by men that do know, my lord, and understand what is fact, what is (c) law, and to do justice indifferently between both.

(c) "Mark that well; for Judge Jermyn called it a damnable doctrine, when Mr. Lilburne declared the jury were judges of Law as well as of Fact." Orig. Edit.—Blackstone (Com. book 4, c. 27, s. 5) says, "The jury have an unquestionable right of determining upon all the circumstances, and finding a general verdict, if they think proper so to hazard a breach of their oaths." So also in b. 3, c. 23, vol. 3, p. 378, 15th edit.) the jury may, if they think proper, take upon themselves to determine, at their own hazard, the complicated question of fact and law.

And, my lord, I do know, and publish to all that now hear me, that the commission for trial of Mr. Lilburne this day, for those differences that are between the state and Mr. Lilburne, is free in law from all those exceptions that he is pleased to put upon it, and is unquestionably legal, and used for these many hundred years together. And as for Mr. Lilburne's declaring the fact, for which he was originally imprisoned, for to be committed in Surrey, and therefore there in law he ought to be tried, and not here in London, being another county; as for Mr. Lilburne's crimes committed in Surrey, his own conscience best knows what they are: but Mr. Lilburne, at most, can but yet guess at what we intend to try him here for, or lay unto his charge.

But, my lord, if Mr. Lilburne will please to put himself upon his trial according to law, my lord, I hope the court, and all that hears and sees their proceedings, will receive full satisfaction in the legality and fairness of their proceedings against him, and himself the benefit of justice and law.

*Lieutenant-colonel Lilburne.* Sir, by your favour, in two words, I shall not be tedious, I now perceive who is my accuser and prosecutor, the gentleman that is a very unequal one; for he is one of the creators (being a member of the house) of you that sit here this day to be my judges; and therefore an over-awing and unfit accuser or prosecutor.

*Lord Keble.* Mr. Lilburne, I pray you hear me a word; for now you speak not rationally nor discreetly: you have had a fair respect and hearing. What you speak of liberties and laws, we come here to maintain them for all, and for you too: and we also come for to vindicate our actions. And as for that you speak of in reference to the commission, I must let you know the commission is warrantable by the laws of England for these 500 years, nay, and before 500 years in substance. The second thing that you speak to, is, that you were apprehended in such an hostile manner, understanding by law you should have been taken in an ordinary way, by an ordinary officer. But, Mr. Lilburne, in all apprehensions of traitors, felons, and murderers, is not the power of the county to be raised, and the sheriff is to call and take what power he pleaseth.

*Lilburne.* By your favour, Sir, not unless I resist; which I did not. And besides, there was no sheriff, nor any other civil officer, at my apprehension.

*Lord Keble.* Mr. Lilburne, spare yourself: it is as they are informed of the danger of the man; they may do it before ever they see him. The next thing you are upon, is, the wrong and injustice that you received by the proceedings in the Star-Chamber against you. You see the proceedings there have been questioned, and you justified; if there be any thing else that hath been done by others in the north, or elsewhere acted, there is no man here that will justify them in their evil. But for a private man, as you are, to tell us of them here, and to

come and tell us to our faces that we are created and constituted by the attorney-general, we will not suffer it, nor farther hear of it. And therefore, Mr. Lilburne, although you have spoken fair words; (and happily more than your friends expected from you) I must tell you that words are but words; and it were well that you would do as well and as rationally as becomes a rational man, as you have declared you will.

*Lilburne.* With your favour, but one word more.

*Judge Jermia.* Mr. Lilburne, pray spare a word, and hear the court: this court sits here by lawful authority, and that is from the parliament, that are the supreme authority of England; so that our power is not derived from those that have no rightful authority to constitute us, but our power is from the public authority of England, which is now by an admirable act of God's providence, lately, but truly revived and settled by God upon them. By that authority this court doth now sit; and you are brought here before them that are most of us judges of the law, and we are sworn to do you and every man justice and right, according as his cause requires, according to law, judgment, equity, and reason. And it was said truly, that which my brother Heath (who now is dead) did say, It is the duty of the judges to be of counsel with the prisoner at the bar before him, and to do that which they are sworn to do: and that you shall have. And accordingly you have received more favour than ever I heard of a prisoner that ever was accused of treason in my life ever had. And as for the commission, I must tell you it is usual to have commissions of Oyer and Terminer, and that even in term-time, for high offences, and such as tend to the destruction of the nation, as Overbury's did, and those that tend to capital treason, whereof you are now accused, by a grand-jury of London, that are freemen of London, citizens, able men, men of religion, men of estate, men of conscience, men of quality: these are your accusers; who have found you, upon their oaths, guilty of treason, and cry out to us the judges for justice against you: and it is they, not we, that proceeded against you. And as for our commission, it is according to the good old laws of the land, founded upon the statute made in Edward the first's time, called Westminster the second. That statute authorized commissions: according to that commission we sit by here this day. And Edward the first was a wise and a good prince, and consented to the people, to let them have such commissions as ours we sit by is, which the people had fought spoutly for in the barons wars in his father's time, and also in his; for he himself was taken prisoner at Lewes, in the county of Sussex. And being a wise prince, he knew that the love of the people was not more to be got than by wholesome and safe laws, that every man's life, and every man's estate, and every man's liberty, might be preserved by, and not be sub-

ject to any arbitrary will or power; but that the sober, and discreet, and wise laws of the kingdom, which our ancestors won by their swords, might be their protectors. A special one of which was the statute of Westminster the second, made in Edward the first's time: by virtue of which statute is this commission directed to the justices of the one bench and the other; and they be all here this day, but only those that of necessity must attend at Westminster, only to preserve the term. Now you are come to answer to that charge, which hath been the greatest opposition to the settlement of government that can be: I mean the settlement of the supreme authority of the nation in the commons now assembled in parliament, not newly erected, but revived into the right place and hands; for it is the law of England revived, that the supreme authority is in the (f) commons assembled in the parliament of England: for so it was in the Saxons time, and the Romans time, and in all times (g) it hath been as it is now; which will sufficiently justify our present proceedings against you. And therefore, I say, for the commission itself, it is in general for the trial of all treasons whatsoever. But the grand inquest have found out no other traitor, that they may accuse, but master John Lilburne, who is now here at the bar. But it is not a bare accusation, but it is the solemn verdict of almost a double jury that hath appeared upon the roll; and upon their oaths do conceive those crimes of treason that are laid against you, to be of so dangerous consequence against the state and commonwealth, that they do call for justice against you as a traitor already found guilty. And therefore I do require you, as you are an Englishman, and a rational man, that you do conform yourself, and tell us plainly what you will do, as in reference to the putting yourself upon your trial by the law, and hear with patience those offences of treason that are laid to your charge.

*Lilburne.* May it please you, Sir, by your favour, I shall not now trouble you with many words.

*Lord Keble.* You go improperly to work.

(f) "But by his favour, never before practised nor used without both King and Lords; a precedent of which he is desired to shew and produce out of any of his law-books." Orig. Edit.

(g) "But there were before the Conquest neither ius of court, lawyers, nor term-judges, in England, but only twelve good and legal men, chosen in each hundred, finally to decide all controversies: which lasted till William the Conqueror subdued that excellent constitution, and instead thereof introduced by his will and sword (contrary to his solemn oath, three several times taken) the intolerable bondage of Westminster Hall, or term-judges, and their outlandish or Norman law-practice in the French tongue; as all the English chronicles universally and truly declare." Orig. Edit.

*Lilburne.* That gentleman, I do not know his name, (pointing to Judge Jermin :) You were pleased to say, That I have had more favour than ever you have heard of any before ever had, in the like case. But, Sir, by your favour, I shall tell you of some that in the like case have had as much, if not more; and that was Throgmorton, in queen Mary's time, who was impeached of higher Treason than now I am; and that in the days of the commonly accounted bloodiest and cruellest prince that this many hundred of years hath reigned in England: And yet, Sir, I am sure in this very place, and that by special commission of Oyer and Terminer; who was accused for being one of the chiefest confederates with Wyat, in his Kentish Rebellion; which Wyat marched with an army against the queen to London: For which actual war or rebellion, Throgmorton\* was in this place arraigned as a Traitor, and enjoyed as much, if not more favour, than I have now enjoyed, although his then judges and prosecutor were bent to take away his life (h), right or wrong. And therefore, Sir, by your favour, it is no extraordinary favour that you have afforded me; it is but only my right by law and justice, and common equity. But, Sir, I shall be short, and put my business to a plain issue, which is this: I have here at the bar given in many strong arguments against the validity and legality of a special commission of Oyer and Terminer, and supposing that to be such an one by virtue of which you sit, and intend to try me for my life; and therefore I have humbly desired (as in reason and I think in law, I may justly do) to hear your commission read; but you have positively denied me that. And therefore I desire all my friends, and all the people that hear me this day, to bear witness, and take notice, that you, contrary to reason and common equity, denied me to let me hear read your commission, by virtue of which you go about to take away my life; which I cannot chuse but desire them to take notice, I declare to be very hard measure.—But, Sir, to save myself from your forelaid snares and desired advantage against me, I will come a little closer to the business. You demand I should hold up my hand at the bar; and I know not what it means, neither what in law it signifies. It is true, I have read the most part of the laws that are in English, which I take to be the foundation of all our legal English privileges; and in them I cannot find any thing that doth clearly declare unto me the full signification or meaning of a man's

\* See No. 52, vol. 1, p. 869.

(h) "Whose remarkable and excellent Defence you may at large read in Hollingshead's Chronicle, in the Life of Queen Mary, which discourse is excellently well worth the speedily reprinting, especially seeing men are made traitors for words; which cruelty Queen Mary abhorred, as may clearly be read in that excellent statute of her's, made in the first year of her reign, c. 1." Orig. Edit.

holding up his hand at the bar. Therefore, if you please but to explain what the meaning and signification of holding up the hand at the bar is, I shall seriously consider of it, and, I hope, return you a rational and discreet answer: For truly in those laws which are in the English tongue that I have read, although I find mention made of holding up the hand, yet I cannot find much of the full signification of it; only I find it to be of a large extent. And as for those laws, or rather the practice part of the law, that are in French and Latin, I cannot read them, and therefore much less understand them. In which regard, for me to hold up my hand at the bar before I understand the true signification of it in law, (which tells me it is in itself a ticklish thing) were for me to throw away my own life upon a punctilio or nicety that I am ignorant of; and therefore, truly, I think I should be a very fool, in my own ignorance to run that danger. And therefore, Sir, I humbly desire the clear explanation of the meaning of it in law, and after that I shall give you a fair and rational Answer.

**Lord Keble.** Mr. Lilburne, you shall see we will deal very rationally with you, and not ensnare you in the least manner, if that be all. The holding up of your hand, we will tell you what it means and signifies in law: The calling the party to hold up his hand at the bar, is no more but for the special notice that the party is the man enquired for, or called on; and therefore if you be Mr. John Lilburne, and be the man that we charge, do but say that you are the man, and that you are there, and it shall suffice.

**Lilburne.** I am John Lilburne, son of Mr. Richard Lilburne—

**Lord Keble.** Mr. Lilburne, what you have to say we will hear presently; only take notice that we will take your acknowledging of your name to be sufficient, if you will say that you are the man. You are called by your name, you have come and answered to your name, in order to your answering the Charge to be read against you; do but this, and it shall suffice without holding up your hand. Therefore let us have no more discourse as to that.

**Judge Jermin.** Mr. Lilburne, pray spare me a word; for you have been heard with patience. You have desired to have the right of the law of England; and yet you do question a fundamental thing, that hath been always used in case of criminal offences. By the law of England, that you desire to have the meaning of it, is but just; but you must know that the law of England is the law of God; and if there be any thing in the law of England, but what was by admirable constitution and reason, we would not meddle with it. But I pray know this, that the law of England is no written law: It is the law that hath been maintained by our ancestors, by the tried rules of reason, and the prime laws of nature; for it does not depend upon statutes, or written and declared words or lines (i). And this is our

laws, that have been maintained by our ancestors, and is subordinate to the law and will of God: Therefore I say again, the law of England is pure primitive reason, uncorrupted and unpolluted by human humours, or human corruptions, wits, or wills: That is the law of England. There be two reasons why holding up the hand hath been used always: First, for notice that those that are called for capital and criminal offences, that they hold up their hands, is to declare that they are the men. My lord hath given you this one reason already; which, I say, is, that he be notified by holding up the hand to all the beholders, and those that be present, and hear him that he is the man. But besides this, there is more in it; that is thus: A pure innocent hand does set forth a clear unspotted heart; that so the heart and hand together might betoken innocency. And therefore hold up your hand, that thereby you may declare you have a pure innocent heart. If you refuse to do this, you do wilfully deprive yourself of the benefit of one of the main proceedings and customs of the laws of England. Now for this, do what you think fit.

**Lilburne.** Well, then, Sir, (applying himself to Mr. Keble, as the President of the Court) I take your explanation of it, and lay hold of that.

**Lord Keble.** You must answer positively, Sir, for you have had advice enough, yea, good advice if you embrace it, it is good advice to you; but the Court doth not expect an Answer from you to what hath been already said to you, but they expect that without any more dispute you apply yourself to answer according to that which you are advised unto. Do it if you will, and if you will but answer to it so as hath been declared unto you, it shall suffice; but so far you must go to this, as to declare whether you be the man or no before you go away. And therefore dispute it no more, lest you deprive yourself of the benefit of the law.

**Lilburne.** Well then, Sir, according to your

(i) “ ‘But,’ saith Mr. Hyde, in his fore-mentioned Arguments against the Northern Special Commission of Oyer and Terminer, page 411, ‘Misera servitus est, ubi jus est vagum aut incognitum;’ that is to say It is a miserable servitude where the law is uncertain or unknown. And the very same saith that great oracle of the law, Sir Edw. Coke, in the Proem to the 3d part of his Institutes, and in the 4th part, fol. 332, and in several places besides. But the people may easily see hereby, that these present judges drive to have no other law in being in England, but what is in their own and their masters’ breasts; that so, by pretence of law, they may give away all the liberties and properties of the people of the nation, as their brother judges did lately to the King, in the case of Ship-money. And then woe, and woe to the people, to be brought back again to that faith, ‘That Ignorance is the mother of Devotion or Obedience.’” Orig. Edit.

own explanation, I say my name is John Lilburne, son to Mr. Richard Lilburne of the county of Durham, a freeman of the city of London, and sometimes lieutenant colonel in the Parliament's Army: And if you will not believe that I am the man, my guardian the Lieutenant of the Tower there, (pointing to him) will aver that I am.

*Lord Keble.* So then you are the man.

*Judge Jermin.* Ask him again: Hearken, Mr. Lilburne, hearken what he says, and use that moderation, and temper, and discretion that you have promised.

*Lilburne.* One word more, and I shall have done; and that is by the law of England— [But being interrupted he cried out] With your favour, Sir, I will come to the main thing; I hope you do not go about to circumvent me, therefore hear me, I beseech you.

*Lord Keble.* Hear the Court, Mr. Lilburne, there shall be nothing of circumvention or interruption: but as you have professed to be a rational and understanding man in words, let your deeds so declare you.

*Lilburne.* Sir, I beseech you, do not surprize me with punctilios or niceties, which are hard things for me to lose my life upon. I tell you again, my name is John Lilburne, son to Mr. Richard Lilburne.

*Lord Keble.* Talk not of punctilios with us, nor talk not of judges made by the laws; you shall not want law: but if you talk of punctilios here in this room, we will stop that language.

*Lilburne.* Truly, Sir, I am upon my life, and shall my ignorance of the formalities of the law, in the practice part thereof, destroy me? God forbid! Therefore give me but leave to speak for my life, or else knock me on the head, and murder me where I stand; which is more righteous and just than to do it by pretence of justice. Sir, I know that Mr. Bradshaw himself, President of the High Court of Justice, as it was called, gave Duke Hamilton (a hostile enemy) leave to speak to the punctilios of the law; yea, and to my knowledge, again and again made an engagement unto him, and the rest tried with him, that the Court nor he would not, by virtue of their ignorance of the niceties or formalities of the law, take advantage against them, to destroy them; but did declare, again and again, that all advantages of formalities should be totally laid aside, and not in the least made use of against them to their prejudice. And I hope you will grant me, that have often been in arms for you, but never against you, as much favour and privilege as was granted to Duke Hamilton, never of your party, but a general of a numerous army against you.

*Lord Keble.* Take it as you will, we have had patience with you, and you must and shall have patience with us. We will pass over all that is by-past, but take heed, by your surly crossness, you give not advantage in the face of the Court, to pass sentence against you, without any further proceedings, or proof of your actions, but what our own eyes see. The co-

remedy is for your advantage more than you are aware of; but if you confess yourself to be Mr. John Lilburne, we have done as to that.

*Judge Jermin.* Mr. Lilburne, at the beginning you talked of moderation, and that you would carry yourself with rationality, which, methinks, in your actions you fall short of; for you have said, that Mr. Attorney-General was a very unequal prosecutor of you, because, you say, he was the (k) creator of your commission. Pray, hear me; I heard you; and do not think to put affronts upon us undeserved. And as for that man that you call Mr. Bradshaw, I tell you again, he is Lord President of the Council of State of the Commonwealth of England; and why you should so much neglect him, doth not so much favour of rationality and moderation, as you pretend yourself to be possessed with.

*Lord Keble.* Come, will you read the Indictment?

*Mr. Broughton* reads, Hold up your hand, John Lilburne, and hearken to your Charge.— 'Thou standest indicted of High Treason, by the name of John Lilburne, late of London, gent. for that thou, as a false traitor, not having the fear of God before thy eyes, but being stirred up and moved by the instigation of the Devil,' &c. as followeth, *verbatim*, in the second Day's Proceedings, to which the Reader is referred.

*Mr. Broughton.* What say'st thou, John Lilburne, art thou guilty of this treason whereof thou standest indicted, or not guilty?

*Lilburne.* Gentlemen, I require the favour that I may be heard, and I shall desire nothing but that which may stand with reason and justice.

*Lord Keble.* Mr. Lilburne, we shall deal with you according to reason and justice, and after such a manner as you yourself shall judge rational and right.

*Lilburne.* Gentlemen, I shall speak but a few words; I beseech you, hear me; for it is upon my life.

*Lord Keble.* You say, you will deal rationally in those ways; that is to be expected from you; the first in reason is to answer, and plead, and before you so do, you cannot be heard.

*Lilburne.* Give me leave to speak, and I shall not speak six lines; (which with much struggling being granted), Mr. Lilburne went on, and said to this effect: Then, Sir, thus, by the Laws of England, I am not to answer to questions against or concerning myself.

(k) "Mr. Lilburne here endeavoured to speak, and shew the Judge his mistake; for he did not say that Mr. Prideaux was the Creator of the Commission, but that he was one of the Creators of all the Judges, and thereby was judge of his judges, and in that regard he was no competent accuser or prosecutor. But they would not suffer him to speak, but cried out, 'Hear the Court!' Which thing also they frequently did afterwards." Orig. Edit.

*Lord Keble.* You shall not be compelled.

*Another Judge.* Mr. Lilburne, is this to answer against yourself, to say, you are not guilty? By the Laws of the Land you are to plead to your Charge, and it is no accusing of yourself to say, Guilty, or Not Guilty.

*Lilburne.* Sir, by your favour—

*Judge Keble.* To answer, that you are Not Guilty, is no great matter, nor definite in Law.

*Lilburne.* By the Law of England I am to be tried by a Rule; but I do not know, by the Rules of Law, what benefit, in reference to my exception against the illegality of my Indictment, I may deprive myself of, in case I should answer before I except.

*Lord Keble.* The law is plain, that you are positively to answer, Guilty, or Not Guilty, which you please.

*Lilburne.* Sir, by the Petition of Right, I am not to answer to any questions concerning myself; therefore I humbly entreat you to afford me the privileges of the Laws of England, and I will return a positive answer to it; if you will but please to allow me but Counsel, that I may consult with them; for I am ignorant of the formalities of law, in the practice part of it, although I here declare, I own the good old Laws of England, and a legal jury of twelve men, yea, and a trial by a jury of legal men. And I do humbly crave, Sir, a copy of the Indictment, or so much of it as I may ground my Plea upon it, and reasonable time to consult with my Counsel, although it be but eight or nine days.

*Lord Keble.* You speak well; but you must do well; it is that we come for: the rationality of it is this, that you should shortly answer to that question, and in a rational, legal way. When you have answered it, you shall have liberty to make your Defence, to maintain that you say; but this, that we now speak of, is a thing in your own breast, in your own knowledge, whether you be guilty of this that is laid to your charge, or no; and if you be clear, you cannot wrong yourself nor your conscience: for in saying, Not Guilty, you know better what you say than any other doth.

*Lilburne.* Sir, I am ignorant of the formalities of the law, having no books in English wherein I can read them; and as for other tongues, I understand none: and therefore for you to take away my life for my ignorance, when the practice part of the law, or the formalities thereof, is locked up in strange language, that it is impossible for me to read or understand, is extreme hard.—It is true, in those English plain laws which I have read, I had something spoken of it; but must aver, that I find there is a great deal of nicety and danger in locking a man up to single formalities, in answering Guilty or Not Guilty: and therefore I beseech you to assign me counsel, to inform my ignorance, and give me but leave to consult with my counsel, and I will return you an answer according to your desire, without any de-

mur, as soon as it is possible for me to know what grounds I go upon.

*Mr. Broughton.* John Lilburne, what sayest thou, art thou Guilty of the Treason laid unto thy charge, or art thou Not Guilty?

*Lilburne.* But under favour thus, for you to come to ensnare and entrap me with unknown niceties and formalities that are locked up in the French and Latin tongue, and cannot be read in English books, they being not expressed in any law of the kingdom, published in our own English tongue: it is not fair play according to the law of England, plainly in English expressed in the Petition of Right, and other the good old statute laws of the land. Therefore I again humbly desire to have counsel assigned to me, to consult with, what these formalities in law signify; so that I may not throw away my life ignorantly upon forms.

*Lord Keble.* Mr. Lilburne, we cannot grant you that favour, it is not consistent to the law, whatsoever you say to the contrary.

*Lilburne.* I hope you will not go about to ensnare me, and take away my life for punctilios.

*Another Judge.* Well then, you will not plead?

*Lilburne.* Yes, if I may be allowed that which I conceive to be my birth-right and privilege, to consult with counsel: or that you please to make the same engagement to me that Mr. Bradshaw, as the President of the High Court of Justice, made to duke Hamilton; which was, that the court would take no advantage at all of his ignorance in the niceties and formalities of the law in his pleading\*: but let me enjoy this engagement from you, and I will plead.

*Lord Keble.* You shall have that which is according to the law; therefore, Mr. Lilburne, I advise you for to plead, and you shall have fair play, and no advantage taken against you by your ignorance of the formality of the law.

*Lilburne.* Well then, Sir, upon that engagement, and because I see you are so positive in the thing—this is my Answer: That I am not guilty of any of the treasons in manner and form, as they are there laid down in that Indictment (pointing to it.) And therefore now, Sir, having pleaded, I crave the liberty of England, that you will assign me counsel.

*Mr. Broughton.* By whom wilt thou be tried?

*Lilburne.* By the known laws of England, and a legal jury of my equals, constituted according to law.

*Mr. Broughton.* By whom wilt thou be tried?

*Lilburne.* By the known laws of England, I mean, by the liberties and privileges of the laws of England, and a jury of my equals legally chosen. And now, Sir, I again desire counsel to be assigned me, to consult with in point of law, that so I may not destroy myself through my ignorance. This is but the same privilege that was granted at Oxford unto me, and

\* This particular does not appear in the report of the Case of the Duke of Hamilton, ante, p. 1155.

the rest of my fellow prisoners arraigned with me.

*One of the Clerks.* You must say, By God and your Country; that's the form of the law.

*Lilburne.* Why must I say so?

*Another Judge.* This is the form and law of the land: Will you plead, Mr. Lilburne, according to the laws of England?

*Lilburne.* Truly I never read it, Sir, in the laws of England, what it is to plead in this nature.

*Lord Keble.* You say you will be tried by the laws of the land, then it is by the country, and so you may plead, and do yourself no harm; for by the country is meant a jury of your equals.

*Lilburne.* Sir, I am doubtful of my ignorance in the laws, yet I will return you an answer, you making good your already engaged promises, that you will take no advantage against me, if through my ignorance, and your importunity, I plead in any form, that in strictness of acceptance may deprive me of any real benefit the law will afford me.

*Judge Thorpe.* Mr. Lilburne, you will be tried by the law, and by the rules thereof: when you say so, you do really declare it to be by your country. So that the true signification of being tried by the law, is the same thing in substance with being tried by the rules of the law.

*Lilburne.* Then I hope my answer is clear and fair, Sir.

*Judge Jermin.* The formality is shortly this: to be tried by God and your country; no more is meant by it than thus, by God, as God is every where present, yea in all courts of justice, and sits and knows all things that are acted, said, and done: the other part of it, by your country, that is, by your country or neighbourhood; the country is called Patria, because your neighbour and your equals, which you are willing to put yourself upon the trial of. By force of that word, the country, a jury of the neighbourhood for trial of you are summoned. Now do what you will.

*Lilburne.* Sir, under your favour, thus; then in the negative I say God is not locally or corporally here present to try me, or pass upon me; but affirmative, I return this answer, That I desire to be tried in the presence of that God, that by his omnipotent power is present every where, and beholds all the actions that are done upon the earth, and sees and knows whether any of your hearts be possessed with a premeditated malice against me, or whether any of you come with so much forethought of malice against me, as that in your hearts you intend to do the utmost you can, right or wrong, to destroy me: and before this all-seeing God I desire to be tried, and by my country, that is to say, by a jury of my equals, according to the good old laws of the land.

*Justice Thorp.* You have spoken very well.

*Lord Keble.* You have done like an Englishman so far as you have gone; and I do assure, that in any formality (as you express or call them) there shall be no advantage against you,

if you mistake in them. Now what you have the next to think upon, is your jury of your countrymen, or neighbours of your equals; and I promise you, we will take care of that, that they shall be good and lawful men of England.

*Lilburne.* I thank you, Sir, but under your favour thus: your indictment is extreme long, and of abundance of particulars, it is impossible that my memory, or any one man's in England, can contain it, or carry it in our heads; and therefore that I may make my defence so as becomes a rational Englishman, I earnestly intreat you, that now you will be pleased to give me a copy of my indictment, or so much of it, as you expect a plea from me upon, and an answer unto, and counsel assigned me, and time to debate with my counsel, and subpoenas for witnesses.

*Ld. Keble.* For counsel, you need none, Mr. Lilburne: for that Not Guilty which you have pleaded, is that which lies in your own breast, which rests in your own counsel, and you know how it is, and can best plead that yourself: counsel lies in matter of law, not of fact.

*Lilburne.* Under favour I desire counsel for Matter of Law, and not for Matter of Fact. My indictment I believe in law, is all matter of law, and I have something to say to it in law.

*Ld. Keble.* If matter of law do arise upon the proof of the fact, you shall know it, and then shall have counsel assigned to you.

*Lilburne.* I myself have before this been upon some trials, and never before this was denied counsel, no, nor so much as ever disputed whether I should have it or no. I also was at a great part of the earl of Straford's trial, who was supposed a most notorious traitor; and yet, if my observation and memory do not exceedingly fail me, he had counsel assigned him at his first desire, and they were continually with him, not only at the bar when he was there, but also had continual and free access to him in prison.—Besides, Sir, I being accused of treason in such an extraordinary manner, and being but an ordinary man myself; no eminent experienced lawyer dare well meddle with my business, no, nor so much as bestow a visit upon me, but he runs a hazard of being undone. And truly my estate is in an extraordinary manner taken from me, so that I have not money to send messengers up and down privately to their chambers: and therefore that I may be freely and allowedly able, without danger of ruin to any man that shall advise me, I shall humbly crave as my right by law, and I am sure by common equity and justice, that I may have counsel and solicitors also assigned me.

*Ld. Keble.* Mr. Lilburne, speak rationally for yourself; when there comes a matter of law, that you are able to say, This is for matter of law, arising from matter of fact, that hath been proved or endeavoured to be proved, when you come beyond that, you shall have it as willingly as you can desire: and withal, this that you say concerning your memory, which you say is not able to carry away, or contain the particulars of this indictment; the indictment, so much as

will charge your memory, will be very short: for it is the publishing of those books charged upon you in the indictment, that will be the matter which will stick, and that matter will be very short, which we must prove against you, which is only matter of fact, and not of law. And therefore for fact of treason you can be allowed no counsel, but must plead it yourself.

*Lilburne.* Sir, under favour, you expect from me impossibilities; for, seeing I have been seven months in prison for nothing, and could not in the least know perfectly what would be laid to my charge, nor after what manner I should be proceeded against, (considering all proceedings against me hitherto have been so absolutely arbitrary, that it was impossible for me in law exactly to come provided :) and therefore seeing I am now here, and you pretend to proceed with me according to the due course of law, and seeing the form of the proceedings in this manner with me is not expressly and exactly declared in print in English, which tongue only I can read and understand; and seeing by the law, which is in English, which I have read, and clearly understand, that there are a great many snares, and a great many niceties in the practice, that are formal proceedings of the law; and seeing I know not certainly, whether if I proceed to matter of proof, before in law I make my exceptions against your indictment, as to matter, time and place, I be not in law deprived of that benefit, which I principally aim at for the preservation of my life; therefore I beseech and most earnestly intreat you, to assign me counsel to consult with, before I be too far insinared: and, if you will not do it, and give me some reasonable time to prepare my plea and defence, then order me to be kuocked on the head immediately in the place where I stand, without any further trial, for I must needs be destroyed, if you deny me all the means of my preservation.

*Judge Jermin.* Mr. Lilburne, it were reasonable to give you satisfaction, if you would receive it. You say you were present at my lord of Strafford's Trial, and you say he had counsel assigned him, not only to stand by him at the bar, but to repair to prison to instruct and advise: but that was not a trial in such a way as this is; it was a trial by way of impeachment before the peers assembled in parliament, and his attainder was made up into an act of parliament; but that is not a trial at the common law per Pares, which is that which yourself have desired, a trial by lawful men, according to the liberties of the laws of England. After your answer to your first question, that is to say, whether you be guilty or not guilty of the things whereof you are accused, no counsel in the world can follow, till the fact be proved, and matter of law do arise thereupon. So that the first thing that must be done, the matter of fact must be proved against you; and then, if it shall appear thereupon to the court, that matter of law doth arise, and you do expect counsel, we must and will perform it; the court are of your counsel so far as to fact. And

then in that case, that law arise thereupon, you may, and ought to have other counsel assigned; and do not you doubt but the court will be as careful of you, as you can be of yourself, and allow you more favour, it may be, than your friends do expect.

*Lilburne.* Under your favour, and by your good-liking, I was once arraigned at Oxford for my life, upon the matter of treason, for levying war in Oxfordshire against the king, as their indictment then said; and my arraignment was by virtue of a commission of Oyer and Terminer, that was (and in law I am sure of it) as legal and as just as yours is: and my lord chief justice Heath, the chief commissioner or president, who was in the eye of the law as legal a judge as any of you, and yet he—

*Ld. Keble.* Mr. Lilburne, we do remember it.

*Lilburne.* I beseech you give me leave to speak for myself, and to go on, for my life lies upon it.

*Ld. Keble.* Hear me one word, and you shall have two. This that you did speak but even now, do not think that we have such bad memories, as that we have already forgot it; your life is by law as dear as our lives, and our souls are at stake if we do you any wrong.

*Lilburne.* I wish you may be sensible of that, Sir.

*Judge Jermin.* Mr. Lilburne, you need not to say so, our souls are upon it, and we are to stand or fall by justice and righteousness as well as yourself is.

*Lilburne.* I say, my lord Heath and the court at Oxford proffered me counsel before any one witness was produced to my face, or any matter of fact came to the proof; yea, and gave me liberty to make my exceptions to the insufficiency of the indictment, which was very short in comparison of yours. I crave the same privilege from you (the nation's pretended friends) that I found at Oxford amongst its declared pretended enemies, against whom in several battles I had fought. And I hope you that pretend to be the preservers of the liberties of England, will not be more cruel and unrighteous than the declared destroyers of them. If you will not allow me counsel as I had there, I have no more to say to you, you may murder me if you please.

*Judge Jermin.* You were pleased to mention some precedents of those that have been accused of High-Treason, that have had counsel assigned to them; and for one you mention that of my lord Strafford, whose trial I told you was parliamentary before the house of peers, upon the impeachment of the commons of England in parliament assembled, and so it went on in a parliamentary way: this proceeding is in an ordinary course of the ordinary quondam court of justice, according to the common law. Now for my lord of Strafford, give me leave to observe this; he had no counsel assigned him until such time as questions of the law did arise, which required counsel, and then he had counsel assigned him, but none before; for that my

lord doth not say, that you shall have no counsel, but that you shall have that which the law allows. And as for that which you speak of counsel at Oxford, it could not be. But when, upon the proof of matter of fact, it appears to the court that there is any question or matter of law arising upon the fact; and when it doth so appear unto us, then you shall have counsel for that. But (I beseech you) hear me on: You are now come before us, according to the common law, to be tried by your country; there is now nothing in question, but whether that matter, that thing, those words contained in the indictment read to you, be true, yea or no; that is, whether they be done or no: for we will not give counsel to plead to the matter of fact contained in your own books, which you remember very well.

*Lilburne*. Those books supposed mine: pray let me have fair play, and not be wound and screwed up into hazards and snares.

*Ld. Keble*. If they be not yours upon good grounds proved before you, you are in no danger; and if upon the proofs of the words and deeds done, there do appear matter of law, you must and shall have counsel: stay till that be done. In the mean time the court will take care that a jury shall be returned, of honest and sufficient legal men to judge of the proofs.

*Lilburne*. There was arraigned with me at Oxford colonel Vivers, of Banbury, now alive, and captain Catesby, who is dead: I will bring colonel Vivers to depose here upon his oath, that my lord Heath, and the rest of the Commissioners of Oyer and Terminer, proffered me counsel, and allowed me and him counsel before ever so much as any witnesses were produced, to prove the least matter of fact. And if you will not be so just towards me as the cavaliers were, and allow me counsel as they did, I have no more to say, but resolve upon this score to stand, and here to die upon the principles of an Englishman. If you will not be so just as the cavaliers were, with whom you and the parliament set us together by the ears to fight with, pretendedly for their injustice, let God and all righteous men judge betwixt you and me.

*Judge Nichols*. If you will not be led by the proceedings of law, it will be worse for you; and you are to know this is not Oxford.

*Lilburne*. Sir, by what better rules of the law can I be led by, than those that I have before my eyes? I am sure, at Oxford, as my right by law, I was, before any fact was proved, proffered counsel by my judges, which were my lord Heath, and Mr. Gardiner, now sir Thomas Gardiner, who is now in London: if you please, I will produce him to this bar, to justify it upon his oath, That the Lord Chief Justice Heath in his presence proffered me counsel upon my arraignment for treason there, as my right by the Privileges of the laws of England, before the fact came to be proved; yea, and also give me liberty to assign the errors of my indictment. He is now in London, and I will pro-

duce him here at this bar, if you please, to justify what I say, if you will give me time, and enable me with ability to summon him in.

*Judge Nichols*. Mr. Lilburne, whether Mr. Gardiner will justify it or no, it is nothing to us; for we are not to walk by Oxford precedents, but by the rules of the law: and the law will afford you no counsel, but in points of law arising upon proof of the fact (1).

*Lilburne*. Under favour thus: I conceive the precedents at Oxford, so far as they are righteous, are fit for your imitation; and whether it be a righteous thing for you, when I am tried for treason before you, to be more cruel towards me, who have fought for you, than the cavaliers at Oxford in the like case were, against whom I fought: and I must tell you, I further conceived it the most unequal and unjust thing in the world for me to have to do, upon the trial of my life, with all the judges of the land (who are all engaged men) that have had above six months time to beat their brains together, with the assistance of divers of my adversaries, who are parliament-men, that were the creators of their power, and for one of them to be my prosecutor; and in this so extraordinary case, for me to be denied to consult with counsel; I tell you, Sir, it is most unjust, and the most unrighteous thing, in my apprehension, that I ever heard of, or saw in all my life. O Lord! was there ever such a pack of unjust and unrighteous judges in the world? Sir, in plain English, let me tell you, if I had thought you would have bound me up to a single plea, and not have given me in my plea the just latitude of law, equity, and reason, but hold me thus close to your single formalities, contrary to your promises, I would rather have died in this very court before I would have pleaded one word unto you; for now you go about, by my own ignorance and folly, to make myself guilty of taking away my own life; and therefore unless you will permit me counsel, upon this lock I am resolved to die.

*Lord Keble*. This is not the rational way you said you would go in.

*Lilburne*. Sir, my life is before you; you may murder me, and take away my blood, if you please.

*Lord Keble*. I will not be out-voiced by you; our lives and our souls are upon it, therefore you shall have equity and justice; yea, such as you desire yourself: but you are now going to fly into extravagancies and heats, which will manifest the raucour of the distemperment and inveniomedness of spirit which is within you. And besides, if we should enter into it,

(1) "What a lying judge is this Mr. Nichols! whereas he himself, with Mr. John Maynard the lawyer, was assigned by the President, Lord Chief Baron Wylde, to be of the Counsel, with Major Rolfe, upon his desire; and that before ever the Grand Jury found his Indictment of Treason, as is fully declared in the next day's following Plea of Mr. Lilburne." Orig. Edit.

we might aggravate your crimes by your own words at the bar. Take heed of it, that you give not advantage against yourself to your own ruin.

*Lilburne.* Sir, I am in no heats, I am but with earnestness pleading for my life, when you deny me all the just means of my preservation, which is my right and due by your own law.

*Judge Thorp.* Mr. Lilburne, I desire to correct a mistake of yours in the law: You were pleased to condemn it as unjust, for the attorney-general's speaking with me when your indictment was a reading; you are to know, he is the prosecutor for the state here against you, and he must confer with us upon several occasions, and we with him, and this is law.

*Lilburne.* Not upon the bench, Sir, by your favour, unless it be openly, audibly and avowedly, and not in any clandestine and whispering way: And by your favour, for all you are a judge, this is law, or else sir Edward Coke, in his (m) 3d part instit. cap. high treason, or petty treason, hath published falsehoods, and the parliament hath licensed them; for their stamp in a special manner is to that book.

*Judge Thorp.* Sir Edward Coke is law, and he says, The attorney-general, or any other prosecutor may speak with us in open court, to inform us about the business before us in open court.

*Lilburne.* Not in hugger-mugger, privately or whisperingly.

*Judge Thorp.* I tell you, Sir, the attorney-general may talk with any in the court, by law, as he did with me.

*Lilburne.* I tell you, Sir, it is unjust, and not warrantable by law, for him to talk with the court, or any of the judges thereof, in my absence, or in hugger-mugger, or by private whisperings.

*Ld. Keble.* No, Sir; it is no hugger-mugger for him to do as he did; spare your words, and burst not out into passion; for thereby you will declare yourself to be within the compass of your indictment, without any further proof; Look to it, that you behave yourself according to the bounds of reason and law, and hear me; for we must cause the jury to be returned.

*Lilburne.* Sir, under favour, I crave but one word more, hear me out. I know very well, and I read it in your own law-books, such a prerogative, as that in cases of treason no counsel shall plead against the king, hath been sometimes challenged to be the king's right by law; but, let me tell you, it was an usurped prerogative of the late king, with all other arbitrary prerogatives and unjust usurpations upon the people's rights and freedoms, which has been pretended to be taken away with him.

(m) "Whose words there, fol. 29, 30, are so plain and express to prove what Mr. Lilburne said to be good law, as nothing in the world can be plainer. See also, to the same purpose, the 2d part Instit. fol. 49, 103, 104." Orig. Edit.

And Sir, can it be just to allow me counsel to help me to plead for my estate, the lesser; and to deny me the help of counsel to enable me to plead for my life, the greater? Nay, Sir, can it be just in you judges, to take up 7 years time in ending some suits of law for a little money or land, and deny me a few days to consider what to plead for my life? Sir, all these pretences of yours were but all the prerogatives of the king's will, to destroy the poor ignorant and harmless people by, which undoubtedly died with him; or else only the name or title is gone with him, but not the power or hurtful tyranny or prerogative in the least. Therefore seeing all such pretended and hurtful prerogatives are pretended to be taken away with the king, by those that took away his life, I earnestly desire I may be assigned counsel to consult with, knowing now especially no pretence why I should be denied that benefit and privilege of the law, of the just and equitable law of England, having put myself upon a trial according to the privileges thereof. And it was declared to me at Oxford, upon the trial of my life there, after I was taken prisoner fighting against the king and his party, even almost to handy-gripes, and to the sword-point, and to the butt-end of our muskets, being a person one of that little number that for many hours together at Brentford fought with the king's whole army, where in the manner, without any articles or composition, I was taken a prisoner, and immediately thereupon arraigned at Oxford; where, notwithstanding all this, it was declared to me by judge Heath to be my right, by the law of England, to have counsel assigned me to help me in point of law, and I had it granted. I confess he is my best authority that I have, and I am sure he was a judge of the law, or else I had never pleaded to him; and he was upon his oath to do justice and right; and he was an able and understanding lawyer, and yet did allow me, an hostile enemy, counsel to help me, as my right by law, before ever any proof to matter of fact was produced: And I beg but the same legal privilege from you, from whom I have more cause to expect it.

*Ld. Keble.* Were you there indicted for treason?

*Lilburne.* Yes, that I was, and for the highest of treasons, by the letter of the law, for actual levying war against the king.

*Judge Thorp.* And yet, for all that you know it was no treason, and so did he too; for you know that you had committed no treason at all in obeying the parliament's command; for what you have done, was done by the parliament's special authority and command; and you had your commission to justify you in your hostile actions; and he knew it well enough your act was no treason, though he did offer you counsel, or else he durst not allow you counsel.

*Lilburne.* I had nothing to justify me in that act, but the equitable sense of the law, the letter of it being point-blank against me, and on the cavaliers side; by which if they had

prevailed, they might have hanged both you and me for levying war against the king, notwithstanding our parliament-commissions: and this I know, Sir, you know to be law in the letter or punctilio's of it.

Judge *Thorp*. It was no treason in you, and he that assigned you counsel, knew it was no treason; and this arraignment of you was as illegal as his assigning you counsel.

*Lilburne*. Sir, by your favour, he was a judge of the law by legal authority, being made by the king, in whom by law, that power was invested: and he looked upon himself as a legal judge, and so did I too: and as a legal judge he arraigned me for doing that act, that by the express letter of the law was treason; and as a legal and honest judge, according to his duty in law, he allowed me counsel.

Judge *Jermia*. For that matter that you talk of, they knew it was no treason, and therefore gave you more privileges than was their right by law, very well knowing, that whatsoever was done to any of you that did fight for the laws, religion and liberties of their country, there might be the like done to others that were prisoners in the parliament's power; and this was the truth of it, and you know it very well; and therefore it is nothing to us, nor in law his willingness.

*Lilburne*. Upon my letters, after the first day of my trial, that declaration of *Lex Talionis* was made, as clearly appears by the words and date of it now in print, which the reader may peruse in the first part of the parliament's Declarations, p. 802, 803.

Judge *Thorp*. I wonder they did not proceed in the prosecution of the indictment, and find you guilty of treason, and so to execution.

*Lilburne*. Under your favour, thus. I appeared at the bar, I pleaded to my indictment Not Guilty, I made exceptions against my indictment; and myself, and the two other gentlemen arraigned with me, had counsel assigned us as our right by law: and the judges most fairly and rationally further told us, Because we will not surprize you, we will give you a week's time to consider (with what counsel you please in Oxford to chuse to come to you) what to plead for your lives; and whatsoever other privileges you can claim by the liberties of the law of England, you shall enjoy them to the utmost. Upon which promise I spoke in open court to the Judge, shewing him the irons upon my hands, in which I was arraigned, and told him: My lord, by the laws of England, no prisoner for any crime whatsoever, that behaves himself civilly and peaceably in his imprisonment, ought to be put in irons, or to any other pain or torment before he be legally convicted; and therefore I desire, as my right by law, that my irons may be taken off. And I said further, My lord, I am shut up a close prisoner in my chamber, denied the use of pen, ink and paper: which is contrary unto law, especially in the time of my trial. Why, says he, you shall be released

from your irons, from your close imprisonment, and have the use of pen, ink and paper: And capt. *Lilburne*, I tell you, you shall enjoy whatsoever other privilege you can challenge as your right by law; for the law of England is a law of mercy, and I hope we shall appear just Judges of it: And therefore you shall freely have either lawyer, or whom you will in Oxford, to come unto you to help you and advise you. And, says he, because you shall see that law and justice is of the king's side against the parliament, and because they shall have no cause to calumniate us at Westminster, and to say we are unrighteous and unjust Judges, that surprize you, and thereby go about to murder you, the court is freely willing to give you a week's time, to consider with your counsel in the mean time what this day seavennight to plead for your life. In which time, being freed of my irons, and of my close imprisonment, and enjoying pen, ink, and paper at my pleasure, by special order from the other two gentlemen, I writ a letter to my wife, and in it inclosed another to your Speaker, and another to young sir Henry Vane, then my familiar acquaintance; all which I sent in post-haste away to my wife by the hands of capt. Primrose's wife, which capt. Primrose was prisoner there; and his wife, who brought up the letter to my wife, is now in London. Which letter my wife delivered to the Speaker, &c. and by her importunate solicitation procured the declaration of *Lex Talionis*; the substance of which, in a letter from Mr. Speaker, my wife brought down to Oxford, and delivered to the lord Heath's own hands upon the Sunday after the first day of our arraignment. And the third day before we were to appear again, my wife arrived at Oxford with the Speaker's letter, which she delivered to Judge Heath himself: Which letter taking notice of our trial, threatened them with *Lex Talionis*, to do the like to their prisoners that they did to us, or any of us. And they having many of their great eminent men prisoners in the Tower and in Warwick-Castle, and other places, did induce them to stop all further prosecution of colonel Vivers, captain Catesby, and myself. And if it had not been for this threatening letter, in all likelihood we had all three been condemned by a commission of Oyer and Terminer, and executed: For my wife did hear Judge Heath say to some of his associates, at the reading of the letter, that as for all the threatening part of it, as to his particular self, I value it not; but, said he, we must be tender of the lives of the lords and gentlemen that serve the king, and are in the custody of those at Westminster. And that clause of *Lex Talionis* put a stop to our proceedings, and further trials at law.

Lord *Kettle*. It was well for you, by your story that you do tell, that you had so fair play: You shall have with us, who are upon our lives and oaths, as much as the law will afford you, and so much as our judgments

and consciences can lead us to, without doing injustice, and granting more than the laws of England will afford. What was done there, is nothing to us here; for we are not to walk by their precedent, but by our own judgments, according to the rules of the law. And here it is thus far just, that upon the proof of matter of fact, if law do arise, you are to have counsel; if not, you are to have none. By your allegation, you say you had counsel assigned you before any matter of fact came to be proved, when as a judge of the law he could not but do it; but if he did, it is nothing to us, we cannot do it. Yet we have in this place proceeded legally hitherto with you; and when that matter of law doth arise from the fact, as you had counsel there assigned you, so shall you have here; and you shall have fair dealing, and fair play, according to law, which is absolutely as I tell you.

*Lilburne.* Sir, by your favour, I crave but one word more; and that is this: Here is a gentleman that is a by-stander, a friend of mine, and my solicitor, who by law, as well as any by-stander, may (n) speak for the prisoner at the bar, in case he perceive things urged against him contrary to law; and therefore I desire he may speak two or three words.

[Mr. Sprat beginning to speak,]

*Lord Keble.* Spare yourself; when your time comes, you shall speak.

*Mr. Sprat.* He asked leave for me first. And, Sir, it is easy to prove the whole indictment to be matter of law.

*Judge Jermin.* What impudent fellow is that, that dare he so bold as to speak in the court without being called? *Mr. Lilburne,* by your own words, you say you were told at Oxford, That by law you were to have counsel; that is as true, that the court is of counsel for the prisoner arraigned at the bar; and so we ought, and shall permit you other counsel, if matter of law, upon the proof of the fact, do arise: but for any other counsel to be assigned you before that appear, is not by law warranted: we shall tread the rules of justice. And we shall do wrong to the whole commonwealth, if we should allow you counsel before matter of law doth arise from the proof of the fact; and to allow counsel in any other case, the court commits injustice.

*Lord Keble.* And this, *Mr. Lilburne,* I will promise you, that when there comes matter in law, let it be a lawyer, or yourself, he shall speak in your behalf; but before he cannot.

*Lilburne.* Sir, the whole indictment, under favour, is matter of law; and the great question that will arise (admit the fact should be true, and admit it should be granted) is, Whe-

ther the words be treason in law, yea or no? And also it is matter of law in the indictment, whether the matter in the indictment be rightly alledged as to matter, time, and place. And it is matter of law in the indictment, where there are divers several pretended treasons committed in divers and several counties, put into one and the same indictment, be legal, yea or no?

*Lord Keble.* Upon proof of the matter of fact, you shall hear and know whether matter of law will arise; and till the words be proved, we cannot say whether that be the law that you suppose.

*Lilburne.* Truly, Sir, you promised me a fair trial, and that you would not take advantages of my ignorance in the law's formalities: but the Lord deliver me, and all true-hearted Englishmen, from such unjust and unrighteous proceedings as I find at your hands, who go about, I now clearly see, by my ignorance, in holding me to a single and naked plea, which is purely as bad, if not worse, than all the prerogatives; and for the worst and grossest of his prerogatives, in a more rigorous manner than they were used in his life-time, to be thus pressed upon me at this day, after he hath lost his life for pretended tyranny and injustice, liberty and freedom, in public declarations declared to the kingdom: I say, if there be justice and equity in this, I have lost my understanding; and the good Lord God of Heaven deliver me from all such justiciaries!

*Lord Keble.* *Mr. Lilburne,* you have been arraigned before us for high-treason, and we bid you forbear those terms of yours long ago; speak that you do rationally, and you shall have fair and Christian answers and replies, as ever any man had at a bar; and go on, you shall have it still, if you will be fair and rational, and not break out into extravagancies and bitterness of spirit.

*Lilburne.* For my part, Sir, I must look upon myself as a lost and dead man, if I have not counsel to help my ignorance, to pitch upon those things that tend to my preservation. And therefore if you will not assign me counsel to advise and consult with, I am resolved to go no further, though I die for it; and my innocent blood be upon your heads!

*Justice Jermin.* You have alledged part of the law of England for your own advantage; but every one that says so, does not prove it to be so. You have said, you will be tried by the laws of England; and yet against the laws of England you have utterly refused, in that you would not hold up your hand, which I do not know any Englishman that ever refused so to do, but yourself. You have been told by the court what the law of England is; and yet you will not be satisfied. We are upon our oaths, and therefore will discharge our consciences, and that in a more eminent manner than my brother Heath did, although we do not deny you liberty to speak for yourself. But now you would have counsel assigned before any matter of law doth appear upon the

(n) "Coke, in his *Instit.* 3 par. cap. 'Petty Treason,' fol. 29, is express in this particular; so he is in cap. 63, being his cap. 'Of Counsel learned in Pleas of the Crown,' fol. 137." *Orig. Edix.*

proof of the fact, which we cannot do; for it were to do injustice, and to do against the law, which the court cannot justify.

*Lilburne*. Sir, under favour, whether or no I have transgressed the law, I will not judge: but I am sure the law, in the equity and intention of it, would have all trials to be equal, and not prejudicial. My prosecutors have had time enough to consult with counsel of all sorts and kinds, to destroy me, yea, and with yourselves; and I have not had any time at all, not knowing in the least what you would charge upon me, and therefore could provide no defence for that which I knew not what it would be. And if by the law of England I cannot have counsel, then upon your own grant, which is, That the laws of God are the laws of England, I desire to have the privilege of the law of God, which you yourself said is the law of England; and I am sure the law of God is, That you should 'do as you would be done to.' Now it cannot be according to the law of God, for my adversaries to have the helps of all manner of counsels, by snares, tricks, and provocations, to take away my life, and for me to be denied the benefit to consult with any to preserve my innocent life against potent malice.

*Lord Kettle*. You say well: the law of God is the law of England; and you have heard no law else but what is consonant to the law of reason, which is the best law of God; and here is none else urged against you.

*Another Judge*. The laws of God, the laws of reason, and the laws of the land, are all joined in the laws that you shall be tried by.

*Justice Jermis*. The question is but this, Whether the law of God, and the law of reason, and the law of man, may be consonant to each other? And whether the court or John Lilburne shall be judges thereof? That is the question.

*Lord Kettle*. And that which you said, Mr. Attorney hath had so much time against you, and opportunity to consult with all manner of counsel to destroy you; your secret actions, though they are now come to public view, are so heinous, as that they do require time to put them into the most sure way of trial; we have proved the clandestineness of them: you did this in secret; now it is come to the face of the world. Now this being matter of fact, no matter of law can appear till proof pass upon it. You have had times to complot your treasonable venomous books, which shall be proved upon you; and till this be done, there is no matter of law to be looked at. This is the law of God: when a man hath done such treasonable things, he shall answer directly and positively whether he be guilty of them or no; and if he answer, not guilty, and they be not fully proved against him, there needs no more to be said.

*Justice Thorp*. Mr. Lilburne, there fell some words from you even now, wherein you think you have this hardship put upon you, when you say the judges and your prosecutors

have had six months time to meet together, and consult together how to destroy you. First, I would not have you believe, nor the rest that hear it, that it is true that you say; for I speak it for my own particular, that I never saw your indictment till this time that I came here, and yet you say we have had six months together to frame it. These are your words: this was not rightly done of you; for it is not true. I speak in my own particular.

*Lilburne*. I am sure the substance of it you might see many months ago; and though all you judges have not at one time met about it, yet the greatest part of you have, that commonly carry the domination of the whole; and at Serjeants-Inn, with Mr. Attorney-general, the most of the judges of England have had several meetings, six, five, and four months ago: for I have had friends there that have seen it, and who have enquired into the cause of such solemn meetings, and your own servants have told them it hath been about me and my trial.

*Justice Thorp*. I speak as for my own particular, that I never was there, and that I never saw your indictment till this time.

*Justice Jermis*. Why, Mr. Lilburne, might we not have such meetings as those? Your business being a matter of this importance, as this is, through the heinousness of your offence, and that it might be so grounded as the warrant of the law is, the judges did meet: and they ought to meet (o) to consider of it, that nothing should be done against you, or any man else, contrary to the law. But yet, for my part, my dwelling is out of London, I heard not of it so soon as you speak of; but after I came to town, I confess I heard of it, and have been present about some debates about it.

*Lilburne*. Only this I say, if by your prerogative you will destroy me as Nebuchadnezzar did endeavour to destroy Daniel by his prerogative, I am as willing to die, as he was to be thrown into the lions den: And if you will not allow me counsel, to consult with what plea to make for my life, I have no more to say. Sir, it is but a vain thing to spend any more words.

*Lord Kettle*. These are but words and flourish, Sir, that you are so willing and ready to die, as you declare you are: But if you be, it

(o) "But Coke, in his chapter 'of Petty Treason,' in 3 par. Inst. fol. 29, expressly saith, and to the end, 'That the trial may be the more indifferent, seeing the safety of the Prisoner consisteth in the indifferency of the Court, the Judges ought not to deliver their opinions before-hand of any criminal case that may come before them judicially.' And he there cites *Humphrey Stratford's Case*, that arch-traitor, in which *Hussey*, Chief Justice, besought *Henry 7th* not to demand of them their opinions before-hand. And in 4 par. Instit. cap. 'High Court of Parliament,' fol. 37, he fully shews the evil of asking judges' opinions before-hand." Orig. Edit.

is better for you. And also it is well you have not to do with judges that would be austere upon you; for you to turn us to be men that come hither to destroy you as Nebuchadnezzar went about to do Daniel: You may judge of what is within you; but of us, what is within us, you cannot judge. You shall have justice here in the face of the country, and of all that hear us: These shall be judges of our proceedings towards you. Take heed, Mr. Lilburne, this language is but the sparks of that venomous heat that is within you; and they may burst out to prove you guilty before us, and in our presence, of that you are charged with, without any further proof or proceedings; for you may do it, you may do it where you stand: And therefore be advised, and take heed what you say.

*Lilburne.* Sir, I have cast up my account, and I know what it can cost me: I bless God I have learned to die, having always carried my life in my hand, ready to lay it down for above this twelve years together, having lived in the favour and bosom of God; and I bless his name, I can as freely die as live.

*Lord Keble.* You shall not now lay it down, if you do not destroy nor cast away the commonwealth; but if you go about to destroy the commonwealth, the commonwealth will spue you up, and destroy you.

*Lilburne.* I desire nothing but counsel, and a little time to consult with them, and to produce my witnesses, and a copy of my indictment: If not, I am willing to die as the object of your indignation and malice; do your will and pleasure.

*Lord Keble.* We are willing to die too.

*Mr. Attorney-General.* What is agreeable to the law of England, the constant settled practice of trying prisoners, will not be denied Mr. Lilburne: But as for that privilege that was granted him at Oxford, is no tie in law to us; neither was it ever heard of in England, that any that did understand the law, did ever, as Mr. Lilburne now desires, allow counsel to a prisoner for such an act as this is, or had the copy of the indictment. It shall not be denied Mr. Lilburne, which is his right by law, in its due place; but to make new precedents and new laws, which, my lord, when done by such a bench as this is, most of the judges in England being present, runs to all criminal cases whatsoever, whether in treason, murder, or other felonies: It is true Mr. Lilburne is now only concerned in it; but if granted to him, it would be a precedent to all future times; by means of which there would never be an end of trials in criminal cases. And it is a wonderful strange thing to me, that when the prisoner hath pleaded the usual way, you proceed not immediately to trial. It is true Mr. Lilburne hath pleaded his own ignorance, and therefore desires longer time: But, my lord, to make a precedent of this nature, that never was known by the laws of England, is very dangerous, very perilous. My lord, the thing that I press is not in relation to time, but in relation to

the public justice; for the same reason it is granted him, it ought not to be denied to any man that asketh it neither for treason or felony. And of what evil consequences it would be, I leave your lordship and the court to judge. —My lords, I do humbly desire that Mr. Lilburne may be dealt with all legal, just, and fair proceedings from the Court. My lord, I do desire accordingly that proceedings may for the commonwealth be so too; and that Mr. Lilburne may be without delay, according to law, proceeded against for his notorious Treasons.

*Lilburne.* Sir, with your favour, I shall crave but one word: This gentleman declares unto you what an evil precedent it would be to give me a little time to consult with counsel, to frame a plea for my life; and yet that judge was pleased to say the law of England is founded upon the law of God, and the laws of reason unspotted, uncorrupted, or undefiled. I am sure the law of God, and the law of uncorrupted reason, is to do as you would be done to; and not to lay snares for your neighbour's life; I am sure the law of God would have all trials indifferent, and no man's life surprized or taken away by niceties or formalities, though never so notoriously accused. And, Sir, for Mr. Prideaux, and others of you, so often to call me notorious Traitor, as you do; I tell you, Sir, you reproach me: For though I am never so notoriously accused, yet in the eye of the law of England I am an innocent man, yea, as innocent as any of those who call me traitor, till such time as I be legally convicted of the fact or crime laid unto my charge; and therefore, Sir, I beseech you, cease your calumniating of me, for you thereby deal not fairly nor legally with me. And, Sir, I confidently hope I shall appear in the eye of the law, in the eyes of you, and in the eyes of all men that hear me this day, an innocent, a just, and a true Englishman, that really loves the welfare of his native country, if I may have fair play, and the scope of the law. And therefore, Sir, blemish me not in the ears of the auditors, till the law, and a conviction by it, do blemish me: For I tell you I am in the eye of the law as innocent as any of yourselves, till I be justly convicted. And therefore I pray cease the calling of me Traitor in this manner.

*Lord Keble.* What need we any more when we are of your opinion? We wish you may come as clearly off as you say you hope to do.

*Mr. Attorney.* My lord, and that it may be so declared, and that the world may know whether Mr. Lilburne be an innocent man, or no, I pray put it to the final issue, and let the law judge.

*Lilburne.* Under favour, for me to be denied law, which I conceive is done unto me when I am denied counsel, and to put the niceties and formalities of the law upon me, the signification of which are writ in such language and tongues as I cannot read, much less understand; and would you destroy me for the

not knowing of that which it is impossible for me to know? Sir, I beseech you be not so extreme towards me. That gentleman saith the law of God is the law of England; and it would have no snares laid to take away a man's life: I pray let me have the benefit of that.

Mr. Attorney. Once you had; and it is but just you should; and I am sure it will be granted unto you.

Lord Keble. Mr. Lilburne, you say well; the prisoner doth not know the law; you do not, and many others do not: But I tell you again, you know so much of the law as is suitable to this plea; you yourself know whether your conscience accuse you guilty of the fact laid unto your charge, or not. For our parts, we say no more than one-and-twenty men upon their oaths have informed us, upon sufficient testimony of witnesses, that what they had said we should further inform ourselves of, before your life be taken away; yea, such is the law of England, the tenderest law in the world of a man's life. I say again, that no such trial for life is to be found in the world, as in England. In any place but in England, a man's life may be taken away upon two or three witnesses; but in England two or three witnesses do not do it: For there are two juries besides, and you have four-and-twenty men returned; you have one-and-twenty men upon their oaths and consciences that have found you guilty: And yet when you have done that, it is not enough by the law of England, but you are also to have twelve rational understanding men of your neighbours to hear all over again, and to pass upon your life. This is not used in any law in the world but in England, which hath the most righteous and most merciful law in the world: and this we sit here to maintain, and let all the world know it, that according to the rules thereof we have proceeded against you.

Judge Michel. Mr. Lilburne, you were speaking of the laws being in other tongues; those that we try you by are in English, and we proceed in English against you; and therefore you have no cause to complain of that.

Lilburne. By your speeches you seem to bind me up to a single plea: Truly I conceive that it is not equitable by the law of God, and the laws of reason. No man's life is to be destroyed by niceties and formalities; yet contrary to your solemn promises, you take all advantage against me by them, and make my ignorance in the ticklish formalities of the law to be the means of my own destruction: although before I pleaded, you engaged unto me you would take no advantage by my ignorance in your formalities, and my mistakes in them should be no disadvantage unto me: and yet now I have pleaded, you seem to hold me close to a single plea. Truly, Sir, I think that is not just nor fair so to break your promises, and by fair words to smooth me on into nets and snares, and to make use of my willingness to be tried by the law of England to drill me on to my own destruction. Truly, Sir, had I

ever thought or believed I should have been denied counsel, I would have died before ever I would in any manner have pleaded to your charge, or have yielded to your smooth insinuations.

Justice Jermin. Those men that know the laws of England, know well that it taketh away no man's life but upon clean proof, and upon manifest contempts of the law. The law is, Whosoever shall go such a way in a court as evidently gives affront to the law, that such one takes away his own life. The facts that you are charged with, if they had taken effect, would have taken away the innocent lives of many: Therefore you are now before us charged with the fact; and every man's conscience knows whether he committed the thing charged upon him or no; and yourself does know whether you be guilty of that you are accused of, or no. But the court must not spend any further time; for Mr. Attorney-General hath returned the writ of *Venire facias*, for the calling or summoning of a jury of life and death.

Lord Keble. Mr. Lilburne, you say you well understand yourself: You knew of your coming, and you knew of the fact that you have committed.

Lilburne. Truly, Sir, six months ago I heard much of my trial; and I longed for it, but could not have it, but was still kept in prison, and abundance of provocations put upon me, to make me cry out of my oppressions; and then to hang me therefore, by a law made after my pretended crime was committed, is not just. And truly, Sir, I heard but by uncertain common fame of my trial now. Some parliament men told my wife and friends that my chiefest crime was corresponding with the prince; and to defend myself against that, I fitted myself, never dreaming that only books should be laid to my charge, and therefore I could not as to that come prepared: and therefore do humbly desire counsel, a copy of my Indictment, and time to bring in my witnesses.

Lord Keble. Hear what is said to you: for your witnesses, you should have brought them with you; we will give you leave to send for them: we will give you time to do, to consider with yourself what to say for yourself, you shall, till to-morrow seven o'clock.

Lilburne. Sir, some of my witnesses live an hundred or eighty miles off; and yet I must bring them to-morrow morning: how is that possible? and therefore I desire time to bring them in, and also subpoenas; for some of them are parliament men, and some of them officers of the army, and they will not come in without compulsion.

Lord Keble. That's the time we will give you longer; you knew of your coming long ago, and therefore ought to have come provided.

Lilburne. Sir, I beseech you give me a convenient time, eight or ten days, that so I may get them together; for how could I be provided before-hand for any thing, but for that which I was at the first imprisoned for, nothing of which

is now laid to my charge? Could I devise upon what you would proceed against me? but, Sir, I have that within me, I bless God, that will be a portion of comfort with me, to carry me through all your malice and injustice.

*Lord Keble.* Never talk of that which is within you; God is in us, as well as in you: Never make a flourish of what is in you; for the fear of God is before our eyes as well as yours; and what we do, we shall have comfort in, in that it is according to the laws of England, the rules of which we are sworn to observe, and every man will do righteous things as well as you.

*Lilburne.* Pray will you give me but eight days time then?

*Lord Keble.* We will give you no more; you ought to have brought them with you, you knew of it long ago; and the Court cannot, nor will not wait upon you.

*Lilburne.* By your favour, Sir, thus; then let me have a little time to consult with counsel.

*Lord Keble.* I tell you, that if the matter be proved, there needs no counsel.

*Lilburne.* Sir, I shall not much insist upon that; but the question is, Whether the matter be treason in law or no, and whether in law it be rightly expressed in the Indictment, as to time and place, with other circumstances thereunto belonging? And I question the legality of the Indictment, and that ought in law to be disputed, before the matter of fact come to be spoken to.

*Lord Keble.* Sir, you said at first, you would speak as a rational and moderate man, and yet you will not be answered. If matter of law do arise out of your fact, that we have told you again and again, you shall have counsel and time.

*Lilburne.* Sir, by your favour, it may be too late to desire counsel after the fact is proved. And besides, having legal exceptions against the Indictment, why should you run me upon the hazard of my life, by ticklish niceties and formalities; and as my prosecutor Mr. Prideaux saith—[But being interrupted, cried out] Sir, I beseech you, do but hear me.

*Lord Keble.* Your distemper will break out, your heart is so full of boiling malice and venom, you cannot contain yourself.

*Lilburne.* Mr. Prideaux is pleased to urge, that the granting of me my desire in reference to counsel, will be so inconvenient a precedent, as will destroy the commonwealth: therefore to avoid the danger of such a destroying precedent, as he is pleased to call it, I desire to have some time assigned to me to get my witnesses together, and then I shall, I doubt not, but convincingly shew you the hazard and destroying mischief of that desperate precedent in denying men liberty to consult with counsel, when they are upon trials for their lives. For my own judgment, my own conscience doth tell me, that it is my undoubted right by the law of England, by the law of God, and the law of reason; and if it be totally denied me, I can but die: and upon that score, by the assistance of God, I am resolved to die.

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*Lord Keble.* You speak great words of your own judgment, your own conscience, your own zeal, and the like: and I tell you, our consciences, and our religion, and our zeal, and our righteousness, I hope shall appear as much as yours: You would make yourself judge in your own cause, which you are not, and so make cyphers of us; but all your high words of conscience and righteousness is but a flourish, to make the people believe or be apprehensive as though we had none, you had all: but you shall know, here we sit with as much tenderness and integrity as you stand there, and to do that uprightly which is according to law and justice.

*Lilburne.* I shall not in the least make any comparisons, neither do I in that particular; I only speak of my own particular, in reference unto that God in whom I have believed, and in whom I enjoy content, peace and quietness of mind: and yet for my part, I shall rather die than willingly go any further, except I have counsel first.

*Lord Keble.* Well, Mr. Lilburne, the court is very tender not to take up any of your time; you have heard what was declared to you there, that Mr. Attorney hath made process against you returnable to-morrow at seven of the clock, and therefore to spend more time will be but your loss and damage. The sheriffs of London are to take care to return the jury to-morrow morning, and therefore the court doth adjourn till seven o'clock to-morrow in the morning; and in the mean time they do commit the prisoner at the bar to the lieutenant of the Tower again.

*Lilburne.* Sir, I did not hear you the first words.

*Lord Keble.* You shall not be denied to hear it again, the court desires to be good husbands of time for you; we could have sat long enough to have trifled away your time that you may spend in your meditations, and take your friends advice; do not stand upon and destroy yourself by words.

*Just. Jermin.* Mr. Lilburne, all that are here are to take notice of it, that the prisoner at the bar hath had more favour already, than ever any prisoner in England in the like case ever had: for by the laws of England, in the matter of treason, whereof you are indicted, you ought to have been tried presently, immediately: But because all the world shall know with what candour and justice the court do proceed against you, you have till to-morrow morning; which is the court's extraordinary favour, and the doors are wide open that all the world may know it.

*Lilburne.* Sir, I can shew one hundred precedents to the contrary in your own books, to disprove what you say.

*Lord Keble.* Adjourn the court.

*Lilburne.* I humbly thank you for what favour I have already received.

The Court adjourned till the next morning, and the Prisoner remanded to the Tower.

GUILD-HALL, Oct. 26, 1649, being Friday,  
at the Trial of lieut. col. JOHN LIL-  
BURNÉ, the Second Day.

The Prisoner being brought to the bar, spake as followeth: Sir, I pray hear me a word or two.

Lord Keble. Mr. Lilburne, I am afraid something troubles you: I will have nobody stand there, \* let all come out but one man.

Lilburne. Here's none but my brother and my solicitor.

Lord Keble. Sir, your brother shall not stand by you there; I will only have one hold your papers and books, and the rest not to trouble you: wherefore the rest are to come out.

Lilburne. Sir, I beg of you but one word, though I do not know any reason why of myself I should not have the privilege of the law, as well as any man in England; yet besides what yesterday I alledged for myself for to have counsel assigned, yet to-day give me leave to mention an unquestionable precedent for my purpose, and that is Major Rolfe, who being an officer in the army, and being lately indicted for high treason (before the Lord Chief Baron Wilde, that now is at Hampshire amizes) for conspiring to poison and pistol the late King, which by the law was the highest of treasons, did conceive himself, in regard of his ignorance, unable to defend himself singly against his enemies' design, which was to take away his life. Whereupon he becomes an humble suitor to the Lord Chief Baron Wilde, that he might have counsel assigned him; and the Court, before ever the grand jury received any testimony against him to find the bill, assigned him counsel, who, as I understand, were one Mr. Nichols, now a Judge of this Bench, and sitting there; and Mr. Maynard, of the Temple: they were both assigned his counsel, and from Mr. Maynard himself I have it, yea, from his own mouth: who being assigned his counsel, they came into the Court, where the grand jury was called before the Judge. Mr. Maynard, and Mr. Nichols, now a judge here, had liberty there to be in the open court, where the witnesses, before the indictment was found, were called, and in open court were sworn, and in open court gave in their evidence before the grand jury; Major Rolfe's counsel being by in open court, to hear all the evidence that was given against Major Rolfe, who in his indictment was indicted for two matters of fact; the first was, That he had declared, that in such a month, and at such a place, he had an intent to pistol the late King, which, by the letter of the law of 25 Edw. 3, chap. 2, was treason. Then there was another charge, That such a day he had so said or declared to poison him, in the presence of such a one; and

they were both put into one indictment. Whereupon Mr. Maynard being assigned by the Lord Chief Baron Wilde, that now is, to be of counsel for Rolfe in the same case (but with abundance of more advantage to him, than I am now in), Mr. Maynard was then of counsel to the prisoner, and had liberty to hear what the witnesses swore against him, and to make his best advantage of it, and that in open court, before the indictment was found by the grand inquest; and although there were two express witnesses against him; yet but one of them swore to one thing, and another to another. Mr. Maynard being one that knew the law better than Major Rolfe did himself, he applied the two statutes of Edw. 6, viz. the 1 Edw. 6, chap. 12, and 5 and 6 Edw. 6, chap. 11, to Rolfe's case: which statutes do expressly declare, That no man ought to be convicted of treason, but by two sufficient witnesses, upon plain and clear evidence to each fact of treason; which evidence, as Sir Edw. Coke says in the third part of his Institutes, ought to be as clear as the sun at noon-day, and not upon one single witness, and upon conjectural presumptions, or inferences, or strains of wit. Now, Sir, I am an Englishman as well as Major Rolfe, and I have been an officer in the parliament army as well as he, and there fought for them as heartily as ever he did in his life, and he was accused for the highest of English treasons. And therefore I humbly crave, that in regard there are many particular errors in the indictment, as to matter, time, and place, that therefore, in reference to the illegality of the indictment, according to this precedent by one of your own fellow-judges, that you would, according to my birth-right, declared in Major Rolfe's case, assign me counsel, as he had, to help my ignorance, that so I may not be destroyed by surprisal, and illegal and unjust prerogatives.

Lord Keble. You see with what a great deal of favour, instead of a few words, we have heard you many. This is a privilege; but this that you say upon it, it may be it was done; but that we do shall be according to that you and we shall find to be according to the laws of the land, and our conscience, and the privilege of the subject. That they did before the grand jury and the witnesses, the witnesses are here sworn in court, in presence of the grand jury, so far as we go with them. That of Mr. Maynard and Mr. Justice Nichols being assigned counsel, for what cause it was then, they best know; it is nothing that doth now concern us, though the treason was against those laws that then were in being; we must come to proof; it may be, he confessed his fact; if you will do so too, it alters the case.

Lilburne. No, Sir, he never confessed it; for if he had, he had been found guilty; but he was saved merely by the skill and honesty of his counsel, Mr. Maynard, and his indictment nulled and evaded before ever the grand jury found it, and that upon this point of law, because, by the two statutes of Edward 6, there

\* "That was in the bar, where his brother col. Rob. Lilburne, his solicitor Mr. Sprat, and other of his friends stood." Orig. Edit.

ought to be two plain and clear witnesses to every part of treason; and though Rolfe was accused by two witnesses, yet there were two facts, and but one witness to the proof of each of them.

**Lord Keble.** When you come to trial, if we see there be need of counsel, the court will be instead of counsel to you; nay, the court, if they see any matter of law for counsel, though you do not ask it, they will give you it. And therefore set your heart at rest: for if there be any thing rational in law that we can spy out, as well as your counsel, we will help you in it.

**Lilburne.** Sweet Sir, I crave but one word more; I am upon my life, and if you deny me what the law affords me, and that which hath been granted to be law by cavalier judges, yea, and by your fellow-judges, who are now in power at this day, the Lord deliver me from standing in need of you to be my counsellors!

**Lord Keble.** We are upon our lives too, as well as you.

**Lilburne.** No, by your favour, not in so imminent a manner as I am.

**Lord Keble.** We are upon our lives and our souls to all eternity.

**Lilburne.** Sir, I beseech you, hear me one word.

**Lord Keble.** I will hear no more.

**Mr. Prideaux.** My Lord, I desire the Court would proceed, and not prolong time, seeing he has pleaded Not Guilty, and confessed something.

**Lilburne.** No, Sir; you do me wrong, and abuse me. I never confessed any thing, neither did I plead Not Guilty; for my plea was conditional, grounded upon your promises, not to take any advantage of my ignorance in your formalities.

**Lord Keble.** Go on; be silent, Mr. Lilburne.

**Lilburne.** If you take away my life, without affording me the benefit of the law, my innocent blood be upon your heads!

**Lord Keble.** Sir, these passionate words will do you no good; you had better forbear them.

**Lilburne.** Pray, hear me then.

**Lord Keble.** Do you say that we do offer to take away your life, Sir? If we do take it away contrary to law, we are liable to answer for it: but we shall judge what you have done. [The Lieut. Col. pressing to speak, was not suffered, but bid be silent.] Sir, I advise you, Sir, spare yourself with patience, and hear the Court.

**Justice Jermin.** Be quiet, Sir.

**Lilburne.** I beseech you, Sir, let me hear but the Grand Jury speak; for I understand from some of themselves, they never found me guilty of Treason, but do conceive themselves wronged by some words yesterday, that passed from some of the Judges; I pray let me hear them speak.

**Lord Keble.** Mr. Lilburne, you said you would be rational, you would be moderate;

you do break out; you will do yourself more hurt than any here can do you: you must be silent and hear the Court, we can lose no more time to hear you. **Cryer** call the Jury.

**Cryer.** The Jury called—[And Mr. Lilburne earnestly pressed to be heard, but could not.] **Cryer.** Miles Petty, William Wormwell.

**Lilburne.** Sir, I beseech you let me but see these gentlemen's faces.

**Lord Keble.** You, master Sprat, you must not talk to the Prisoner; you may stand and hold the books: you did offend yesterday, but you shall not do so to-day, for you shall not not stand near the Prisoner to talk to him.

**Lilburne.** My lord, the law says, a Standerby may speak in the Prisoner's behalf at the bar, much more whisper to him; but especially if he be his Solicitor.

**Cryer.** John Sherman, Thomas Dainty, Ralph Ely, Edmond Keyzer, Edward Perkin, Ralph Packman, Francis Woodall, William Commins, Henry Hanson, Roger Jenkenson, Josias Hamond, Richard Allen, Richard Nevill, John Mayo, Henry Tooley, Arthur Due, Roger Sears.

**Clerk.** You good men of the city of London, appear. Stephen Ives, John Sherman, Ralph Ely, Roger Jenkenson, Josias Hamond, Richard Allen, Richard Nevill, Roger Sears, John Mayo, Nicholas Murren.

**Clerk.** You Prisoner at the bar, these good men that are here presented before the Court, are to be of your Jury of life and death; if therefore you will challenge them, or any of them, you must challenge them before they go to be sworn, and then you shall be heard.

**Cryer.** Every man that can inform my lords the Justices, and the Attorney-General of this Commonwealth, against master John Lilburne prisoner at the bar, of any Treason or Felony committed by him, let them come forth, and they shall be heard, for the Prisoner stands upon his deliverance; and all others bound to give their attendance here upon pain of forfeiture of your recognizance, are to come in.

**Lilburne.** Sir, I beseech you give me leave to speak.

**Lord Keble.** You cannot be heard.

**Lilburne.** Truly, Sir, I must then make my protest against your unjust and bloody proceedings with me, before all this people; and desire them to take notice, that yesterday I pleaded to my bill conditionally, that no advantage should be taken against me for my ignorance in your formalities, and you promised me you would not.

**Lord Keble.** We give you too much time; you will speak words that will undo you: is this your Reason? You shall talk in your legal time, and take your legal Exceptions, we will hear you till midnight.

**Lilburne.** Then it will be too late, Sir.

**Justice Jermin.** You have given a great slander, and that doth not become a man of your profession; you speak very black words.

**Lilburne.** I beseech you, do but hear me

one word; I do not know the faces of two of the men that were read unto me, I hope you will give me time to consider of them.

Lord Keble. No, Sir, you ought not to have it.

Lilburne. Will you let me have some friends by me that are citizens of London, that know them, to give me information of their qualities and conditions? for without this, truly you may as well hang me without a trial, as to bring me here to a trial, and deny me all my legal privileges to save myself by.

Lord Keble. If you be your own judge, you will judge so; go on.

[Mr. Sprat, or col. Robert Lilburne, whispers to the Prisoner to challenge one of the Jury, which the Judge excepted against.]

Lilburne. Sir, by your favour, any man that is a By-stander may help the Prisoner, by the law of England.

Lord Keble. It cannot be granted: and that fellow come out there, with the white cap, pull him out.

Lilburne. You go not according to your own law in dealing thus with me.

Justice Jermin. Your words were never a slander, nor never will be; hold your peace. Cryer, go on.

Cryer. Stephen Blyth, look upon the Prisoner.

Abraham Seal, John King, Nicholas Murren, (Thomas Dariel) [the Prisoner excepted against him] Edward Perkins, Francis Peale.

Justice Jermin. Was he recorded and sworn before he spake, or no?—Cryer. No, my lord.

Justice Jermin. Then let him continue, if he be right recorded.

Cryer. The oath was not given quite out.

Justice Jermin. Then he hath challenged in time; let him have all the lawful favour that may be afforded him by law.

Wm. Commins sworn, Simon Weedon sworn.

Lilburne. He is an honest man, and looks with an honest face, let him go.

Henry Tooley sworn, Arthur Due excepted against.

Lord Keble. Take away Mr. Due, let him stand a little by.

Henry Hanson put by, being sick; one that could not bear, excepted against; John Sherman, Ralph Head, Roger Jeukenson, Josias Hammond, Richard Allen, John Mayo, Roger Sears, Henry Hanson excepted against, Edmund Keyser sworn.

The Jury called.

Clerk. Twelve good men and true, stand together, and hear your Evidence.

Justice Jermin. Cryer of the court, let the Jury stand six of the one side, and six of the other.

Clerk. 1. Miles Petty, 7. Ed. Perkins,  
2. Steph. Ives, 8. Ralph Packman  
3. John King, 9. Wm. Commins,  
4. Nich. Murren, 10. Simon Weedon,  
5. Th. Dainty, 11. Henry Tooley,  
6. Edm. Keyser, 12. Abr. Smith.

Of the Jury, six live about Smithfield, and in Gosling-street, two in Chesapeake, two in Bread-street, and one in Friday-street.

Justice Jermin. It is well done.

Cryer. The lords the Justices do straitly charge and command all manner of persons to keep silence while the Prisoner is in trial.

Mr. Broughton. John Lilburne, hold up thy hand.

Lilburne. As I did yesterday, I acknowledge myself to be John Lilburne, freeman of London, son to Mr. Richard Lilburne, of the county of Durham, and some time lieutenant-col. in the Parliament-Army.

Justice Jermin. You refuse to hold up your hand; and though you break the law of England, the Court will not break it.

Lilburne. I do what the Court declares is my right and duty to do; I do no more than declare my name be so as it is.

Lord Keble. Read the Indictment.

Mr. Broughton reads. Held up thy hand, John Lilburne; thou standest here indicted of High Treason by the name of John Lilburne, late of London, gentleman, for that thou, as a false Traitor, not having the fear of God before thine eyes, but being stirred and moved up by the instigation of the Devil, didst endeavour not only to disturb the peace and tranquillity of this nation, but also the government thereof to subvert, now established without king or house of lords, in the way of a Commonwealth, and a free state, and happily established; and the Commons in Parliament assembled, being the Supreme Authority of this nation of England, to disgrace, and into hatred, base esteem, infamy and scandal, with all the good, true, and honest persons of England, to bring. That is to say, that thou the said John Lilburne, on the 1st day of October, in the year of our Lord 1649, and in divers other days and times, both before and after, in the parish of Mary the Arches, in the ward of Cheap, London, aforesaid, of thy wicked and devilish mind and imagination, falsely, maliciously, advisedly, and traitorously, as a false traitor, by writing and imprinting, and openly declaring, that is to say, by a certain scandalous, poisonous, and traitorous Writing in paper, intitled, 'A Salva Libertate;' and by another scandalous, poisonous, and traitorous book, intitled, 'An Impeachment of High Treason against Oliver Cromwell, and his son-in-law Henry Ireton, esqrs. late Members of the late forcibly dissolved House of Commons; presented to public view by lieutenant-colonel John Lilburne, close prisoner in the Tower of London, for his real, true, and zealous affection to the Liberties of this nation.' And by another scandalous, poisonous, and traitorous Book, imprinted, and intitled, 'An Outcry of the Young-men and Apprentices of London, or an Inquisition after the fundamental Laws and Liberties of England, directed Aug. 29, 1649, in an Epistle to the private Soldiers of the Army, especially all those that signed the solemn Engagement at Newmarket-Heath, the 5th of June, 1648, but

“more especially the private Soldiers of the General’s regiment of horse, that helped to plunder and destroy the honest and true-hearted Englishmen, traitorously defeated at Burford, the 15th of May, 1649. And also by another scandalous, poisonous, and traitorous Book, intitled, ‘The legal fundamental Liberties of the People of England, revived, asserted, and vindicated,’ didst publish that the government aforesaid is tyrannical, usurped, and unlawful; and that the Commons assembled in Parliament are not the Supreme Authority of this nation. And further that thou the said John Lilburne, as a false Traitor, God before thine eyes not having, but being moved and led by the instigation of the Devil, endeavouring, and maliciously intending to subvert the Government aforesaid, as is aforesaid, well and happily established; thou the said John Lilburne, afterwards (that is to say), the aforesaid 1st day of

“Monday 18th June, 1649,” says Clement Walker, “came forth that most useful Book of John Lilburne, called, ‘The legal fundamental Liberties of the People of England revived, &c.’ wherein he excellently well sets forth the new usurped tyranny of that hydra of Nimrod’s now subverting our laws, liberties, and property, consuming us with illegal taxes, excise, free quarter, monopolies, and sharing land, money, goods, and offices amongst themselves, perpetuating an army to enslave us, and overthrow the fundamental government of this nation, in order to which they have complied with, and cheated all interests, broken all their obligations to God and man, violated all the laws of this land, their own protestations, covenants, the oaths of allegiance, supremacy, (which themselves caused the people to take) and their own votes, declarations, &c. The illegality of their late erected high court of justice, and their unjust proceedings therein, the tyranny and usurpation of the council of state and officers of the army. And proveth, that colonel Pride’s new purged, new packed house, is neither a house of commons, nor parliament; their usurped supreme authority to be a mere nullity or fiction, and especially, that this parliament is clearly dissolved and ended, which he proveth by the death of the king, and by many other solid arguments; and therefore all their actings to be void and null, with many other considerable passages, where he ingenuously confesseth, that being the king’s prisoner at Oxford, with many other of the parliament party, the king did strictly observe the laws of the land in his proceedings against them, which this parliament doth not do in any their most legal proceedings, for all their pretended engagements, declarations, votes, protestations and covenants to maintain and defend the laws and liberties of the people, ergo, the king really, the faction in parliament but pretendedly, fought for our laws and liberties.”

† “Note, that Mr. Lilburne was imprisoned by the Council of State as a Traitor, the 28th of March, 1649, and they there came, and after

October, in the year of our Lord 1649 aforesaid, and divers other days and times, as well before as after, at London aforesaid, that is to say, in the parish and ward aforesaid, at London aforesaid, maliciously, advisedly, and traitorously didst plot, contrive, and endeavour to stir up, and to raise force against the aforesaid Government, and for the subverting and alteration of the said Government; and those wicked, malicious, and traitorous advicements to put in execution, &c. And thou the said John Lilburne afterwards, that is to say, the aforesaid first day of October, in the year of our Lord 1649 aforesaid, and divers days and times as well before as after, at London aforesaid; that is to say, in the parish and ward aforesaid; of thy depraved mind, and most wicked imagination, in and by the aforesaid scandalous, poisonous, and traitorous Book, intitled, ‘An impeachment of High Treason against Oliver Cromwell, and his son-in-law, Henry Ireton, esqrs. late Members of the late forcibly dissolved House of Commons; presented to public view by lieut. colonel John Lilburne, close prisoner in the Tower of London, for his real, true, and zealous affection to the Liberties of his native country:’ falsely, maliciously, advisedly, and traitorously, didst publicly declare; amongst other things in the said Book, these false, scandalous, malicious, and traitorous words following: ‘But, my true friends,’ (meaning the friends of the said John Lilburne) ‘I’ (meaning the aforesaid John Lilburne) ‘shall here take upon me the boldness, considering the great distractions of the present times, to give a little further advice to our friends aforesaid, from whose company or society, or from some of them, hath been begun and named out the most transcendent, clear, rational and just things, for the people’s liberties and freedoms; that the aforesaid John Lilburne had seen or read in this nation, as your notable and excellent Petition of May the 30th, 1647, burnt by the hands of the common hangman, recorded in my Book called ‘Rash Oaths unwarrantable,’ pag. 29, 30, 31, 32, 33, 34, 35; with divers Petitions of that nature, and the Petition of the 19th of January, 1648, recorded in the following discourse, pag. 45, 46, 47, 48, and the masculine Petition of the 11th of September, 1648, so much owned by Petitions out of several counties: yea, and by the officers of the army’s large Remonstrance from St. Albans, the 16th of November, 1648, pag. 67, 68, 69. The substance of all which, I’ (thou the aforesaid John Lilburne meaning) ‘conceive is contained in the printed sheet of paper, signed by my fellow prisoners, Mr. William Walwin, Mr. Richard Overton, and Mr. Thomas Prince, and myself, dated the 1st of May, 1649, and intitled, ‘The Agreement of the Free People of England.’” Which false,

arraign him as a Traitor, for actions done above five months after, waving all the pretended crimes for which they first imprisoned him.”—Orig. Edit.

scandalous, and traitorous Book, called "The Agreement of the People of England," tends to the alteration and subversion of the Government aforesaid. 'The principles of the aforesaid Agreement, I' (meaning yourself the said John Lilburne) 'hope and desire you' (the friends of the aforesaid John Lilburne meaning) 'will make the final centre, and unwavering standard of all your desires, hazards and endeavours, as to the future settlement of the peace and government of this distressed, wasted, and divided nation: the firm establishing of the principles therein contained, being that only which will really and in good earnest marry and knit that interest, whatever it be, that dwells upon them, unto the distressed or oppressed commons of this nation.'

'But the principles of the foresaid Agreement being so detestable and abominable to the present ruling men, as that which they know will put a full end to their tyranny and usurpation, and really ease and free the people from oppression and bondage; that it is something dangerous to those that go about the promotion of it; yet I shall advise and exhort you,' (meaning the friends of him the aforesaid John Lilburne) 'vigorously to lay all fear aside, and to set on foot the promotion of it,' (meaning the said Agreement) 'in the same method we took for the promotion of the foresaid Petition of the 9th of January, 1647, laid down in the following Discourse, pag. 23, 24, 25, and to write to all your friends in all the counties of England, to chuse out from amongst themselves, and send up some agents to you (two at least for each county, with money in their pockets to bear their charges) to consider with your called and chosen agents, of some effectual course speedily to be taken for the settling of the principles thereof' (meaning the aforesaid false Agreement, devised by yourself the aforesaid John Lilburne), 'and to set up the promoting of' (the foresaid feigned Agreement meaning) 'as that only which in an earthly Government can make you' (the aforesaid friends of the said John Lilburne) 'happier; at least, to know one another's minds, in owning and approving the principles of the foresaid false Agreement, that so it may become to you' (meaning the foresaid friends of the foresaid John Lilburne), 'and all your friends, your centre, standard, and banner, to flock together to, in time of those foreign innovations, and domestic insurrections, that are like speedily to bring miseries enough upon this poor distressed nation,' (the aforesaid nation of England again meaning) 'and unanimously resolve and engage one to another, neither to side with, or fight for, the chimeras, fooleries; and pride of the present men in power,' (the aforesaid parliament of England meaning) 'nor for the prince's will, nor any other base interest whatsoever: the which if you' (the aforesaid friends of the said John Lilburne meaning) 'should fight for, it would be but an absolute murder of your brethren and countrymen you knew not where-

fore, unless he or they will come up to those just, righteous, and equitable principles therein contained, and give rational and good security for the constant adhering thereunto.'

'And upon such terms, I do not see but you may justifiably, before God or man, join with the Prince himself; yea, I am sure, a thousand times more justly, than the present ruling men (upon a large and serious debate) joined with Owen Roe O'Neale, the grand, bloody rebel in Ireland; who, if we must have a King, I (meaning the aforesaid John Lilburne) for my part had rather have the Prince (meaning Charles Stuart, son to the late King) than any man in the world, because of his large pretence of right, which if he come not in by conquest, by the hands of foreigners (the bare attempting of which may apparently hazard him the loss of all at once) by gluing together the now divided people, to join as one man against him; but by the hands of Englishmen, by contract upon the premises aforesaid (which is easy to be done) the people will easily, see that presently thereupon they will enjoy this transcendent benefit (be being at peace with all foreign nations, and having no regal pretended competitor) viz. 'The immediate disbanding of all armies and garrisons, saving the old Cinque Ports; and so those three grand plagues of the people will cease, viz. Free quarters, Taxations, and Excise; by means of which, the people may once again really say, They enjoy something they can in good earnest call their own. Whereas for the present army to set up the pretended false saint Oliver, or any other, as their elected king, there will be nothing thereby, from the beginning of the chapter to the end thereof, but wars, and the cutting of throats, year after year; yea, and the absolute keeping up of a perpetual and everlasting army, under which the people are absolute and perfect slaves and vassals, as by woeful and lamentable experience they now see they perfectly are; which slavery and absolute bondage is like daily to increase, under the present tyrannical and arbitrary new-erected robbing government. And therefore rouse up your spirits before it be too late to a vigorous promotion, and settling of the principles of the foresaid Agreement, as the only absolute and perfect means to carry you off all your maladies and distempers.'

Here Lieut. Colonel Lilburne, in the first day's reading the Indictment, taking notice of the Judge Thorp and Mr. Prideaux to whisper together, cried out, and said to this effect:

*Lilburne.* Hold a while, hold a while, let there be no discourse but openly; for my adversaries or prosecutors whispering with the Judges, is contrary to the law of England, and extremely foul and dishonest play; and therefore I pray let me have no more of that injustice.

*Mr. Attorney.* It is nothing concerning you (let me give him satisfaction), it is nothing concerning you, Mr. Lilburne.

*Lilburne.* By your favour, Mr. Prideaux, that is more than I do know; but whether it be or not, by the express law of England, it ought not to be; therefore I pray let me have no more of it.

*Mr. Broughton.* And further, thou the said John Lilburne standest indicted, for that thou the aforesaid 1st day of October, in the year of our Lord 1649, and divers days and times, as well before as after, in London aforesaid, and in the parish and ward aforesaid, didst maliciously, advisedly and traitorously publish another false, poisonous, traitorous and scandalous book, intitled, "An Outcry of the Young-men and Apprentices of London, or an Inquisition after the lost Fundamental Laws and Liberties of England:" having these traitorous and scandalous words (amongst other things) following; that is to say, 'We,' (meaning the Young-men and Apprentices of London) considering what is before premised, 'are necessitated and compelled to do the utmost we can for our own preservations, and for the preservation of the land of our nativity; and never, by popular Petitions, address ourselves to the men sitting at Westminster any more, or to take any more notice of them, than as of so many Tyrants and Usurpers; and for the time to come to hinder, as much and as far as our poor despised interest will extend to, all other whatsoever from subscribing or presenting any more popular Petitions to them; and only now as our last refuge, mightily to cry out to each other, of our intolerable oppressions, in Letters and Remonstrances signed in the behalf and by the appointment of all the rest, by some of the stoutest and stiffest among us, that we hope will never apostatize, but be able by the strength of God to lay down their very lives for the maintaining of that which they set their hands to.' And further, That thou the aforesaid John Lilburne afterwards, that is to say, the aforesaid 1st day of October, in the year of our Lord 1649, and divers other days and times, as well before as after, not being an officer or soldier, or member of the army aforesaid, at London aforesaid, in the parish and ward aforesaid, as a false traitor, did maliciously, advisedly, and traitorously endeavour to stir up a dangerous mutinous and traitorous distemper, mutiny and rebellion in the Army now under the command of Thomas lord Fairfax, and didst endeavour to draw Tho. Lewis, John Skinner, and John Toppe from their obedience to their superior officers, &c. and further, didst deliver unto the three soldiers before-named, the said Book, intitled, "An Out-cry of the Young-men and Apprentices of London:" having these words following contained in them: 'Surely all sense and compunction of conscience is not totally departed from you; hear us therefore in the earnest bowels of love and kindness, we intreat and beseech you, with patience, and do not abuse us for complaining and crying out, for the knife hath been very long at the very throats of our liberties and freedoms; and our humilens are too great and many for

us, we are not able to bear them, and contain ourselves; our oppressions are even ready to make us despair (or forthwith to fly to the prime laws of Nature, viz. the next violent remedy at hand, light where it will, or upon whom it will); they are become as devouring fire in our bosoms, ready to burn us up, rendering us desperate and careless of our lives, prizing those that are already dead above that are yet alive, who are rid of that pain and torment that we do and must endure, by sensible seeing and beholding, not only the dying, but the daily burial of our native liberties and freedoms, that we care not what becomes of us, seeing that we are put into that original state of chaos and confusion, wherein lust is become a law; Envy and malice are become laws, and the strongest sword rules and governs all by will and pleasure; all our antient boundaries and land-marks are pulled up by the roots, and all the ties and bonds of human society in our English horizon totally destroyed and extirpated. Alas, for pity! we had rather die, than live this life of a languishing death, in which our masters possess nothing, to buy themselves or us bread to keep us alive, that they can call their own; therefore it is no boot to serve out our times, and continue at our drudging and toiling trades, whilst these oppressions, cruelties and inhumanities are upon us, and the rest of the people, exposing thereby the nation, not only to domestic broils, wars, and bloodsheds, (wherein we are sure our bodies must be the principal butts) but to foreign invasions by France, Spain, Denmark, Swethland, &c. as was well observed by an endeared and faithful friend of the forementioned late treacherously defeated party at Burford, in their book of the 90th of August 1649, intitled, "The Levellers vindicated, or the Case of the Twelve Troops truly stated," p. 11 and 13, which we cannot but seriously recommend, with them, to your serious perusal and judgment, and desire to know of you (but especially the private soldiers of the gen. regiment of horse, who we understand had a hand in seizing upon and plundering our true friends at Burford), whether you do own the abominable and palpable treacherous dealings of your general and lieutenant-general Cromwell, and their perfidious officers with them, or no? (that so we may not condemn the innocent with the guilty, and may know our friends from our foes.) As also to tell us, Whether you do approve of the total defection of your army, under which it now lieth, from their faith and fallen engagement made at Newmarket-Heath, the 5th of June 1647, not one of those righteous ends, in behalf of the parliament and people, or which your vow was made, being yet fulfilled or obtained; but on the contrary (as we have before-rehearsed), a whole flood-gate of tyrannies are let in upon us, and overwhelm us; and whether you [the aforesaid private soldiers meaning] justify all those actions done in the name of the army,

“upon your account, and under the pretences of that engagement, since the engagement itself was broken, and your council of adjutors dissolved? And whether you will hold up your swords to maintain the total dissolution of the people’s choicest interest of freedom, viz. frequent and successive parliaments, by an agreement of the people, or obstruct the annual succession? Whether you do allow of the late shedding the blood of war in time of peace, to the subversion of all our laws and liberties? And whether you do countenance the extirpation of the fundamental freedoms of this common-wealth, as the revocation and nullity of the great Charter of England, the Petition of Right, &c.? And whether you do assent to the erection of arbitrary prerogative courts, that have or shall over-rule or make void our antient way of trials in criminal cases by a jury of twelve men of the neighbourhood: And whether you will assist or join in the forcible obstruction of this martial and tyrannical rule over us? Also whether you will fight against and destroy those our friends that shall endeavour the composition of our differences, together with the procurement of our freedoms, and settlement of our peace (your plenty and prosperity), according as it was offered by the four gentlemen prisoners in the Tower of London, upon the first day of May 1649, as a peace-offering to the nation, by the Agreement of the people. [the aforesaid feigned agreement meaning] Lastly, We [the aforesaid young men and apprentices of London meaning] earnestly beseech you [the aforesaid private soldiers again meaning] to acquaint us, whether from your hands, to your power, we may expect any help or assistance in this our miserable, distressed condition, to the removal of those iron bonds and yokes of oppression [the aforesaid government in way of a Commonwealth and Council of State meaning] that have thus enforced us to complain, and address ourselves thus to your consideration; for we [the aforesaid young men and Apprentices again meaning] cannot chuse but acquaint you [the aforesaid private soldiers again meaning] that we are seriously resolved, through the strength and assistance of God, with all the interest we have in the world, to adhere to the righteous things contained in our treacherously defeated forementioned friends vindication, [the aforesaid traitorous book, intitled, “The Levellers Vindicated, or the Case of the Twelve Troops truly stated,” again meaning.]

And further, thou the said John Lilburne, as a false traitor, by most wicked traitorous conspiracies, designs and endeavours of thine aforesaid, afterwards, that is to say, the aforesaid first day of October, in A. D. 1649 aforesaid, and divers other days and times, as well before as after, didst in the parish and ward of London aforesaid, in and by the aforesaid scandalous, poisonous and traitorous book, entitled, “An Impeachment of High Treason against Oliver Cromwell, and his son-in-law

Henry Ireton,” &c. most falsely, maliciously and traitorously publish, and openly declare, amongst other things, in the said book, these following scandalous, treacherous, untruthful, and traitorous clauses and words following; that is to say, “But I [meaning thyself the said John Lilburne] and many other persons [meaning the aforesaid friends] intreat you seriously to consider that I cannot advise you to make addresses to him [meaning the aforesaid Thomas lord Fairfax, captain-general] as the general of the nation’s forces [the forces of this nation of England meaning]; for he [the aforesaid captain-general meaning] is no general, but is merely a great tyrant [meaning the aforesaid captain-general] standing by the power of his own will, and a strong sword borne up by his vassals, slaves and creatures [the soldiers of the army aforesaid meaning], having no commission to be general, either from the law or the parliament, nor from the prime laws of nature and reason. For first, when he was made general by both houses of parliament, it was expressly against the letter of the laws. And secondly, when he refused to disband, &c. he hath rebelled against his parliament-commission, and thereby destroyed and annihilated it, &c.”

[The Reader is desired to take notice, That in the Indictment itself there was a great many other things than in this is expressed; as particularly divers passages out of a Book, called Mr. Lilburne’s, entitled, “The Legal Fundamental Liberties of England revived,” &c. as also out of another Book, entitled, “A Preparative to an Hue and Cry after Sir Arthur Hasleris,” &c. as also out of, “The Agreement of the People, of the first of May, 1649,” with several other remarkable things in matter and form, that were more neglected to be taken than the pleadings; because it was not supposed, but the Indictment (being a record) a true copy of it might easily be had; considering that by law all records ought freely to be used by any freeman of England, and copies of them denied to none that desire to take them. But that privilege being in this cause already disputed and denied; in which regard, the Reader must at present accept of the best imperfect notes that the publisher could pick up.] But to go on.

And further, That thou the said John Lilburne, as a false traitor, all and singular the clauses and English words aforesaid, and many other traitorous, poisonous and malicious expressions in and by the aforesaid writings, and by the aforesaid several books, as aforesaid recorded, and by thee the aforesaid John Lilburne published, and openly declared in the several books so as aforesaid printed, and by the aforesaid writings, and by thee the aforesaid John Lilburne, in manner and form aforesaid, published and openly divulged and declared divers other scandalous, malicious, untruthful and treacherous clauses and words in the said books contained, falsely, maliciously,

advisedly and traitorously, bast published and openly declared, to the intent to stir up and raise forces against the government aforesaid, in the way of a commonwealth, and free state as aforesaid established; and for the suppressing and alteration of the said government, and to stir up mutiny in the army aforesaid; and also to withdraw the said John Tooke, Thomas Lewis and John Skinner, and many other soldiers, from their obedience to their superior officers and commanders, and to set them in mutiny and rebellion against the public peace, and to manifest contempt of the laws of this commonwealth and free state, and against the form of the statutes in this case made and provided.

The Indictment being reading, and the noise of the people in the hall great, the Prisoner said he could not hear, and had some few lines before read over to him.

*Lilburne.* Pray hold your peace, gentlemen; I beseech you be quiet. [Speaking to the people].

*Lord Keble.* Quiet yourself, we will quiet them for you.

*Broughton.* Which country are you? so that you are to find whether he is guilty or no, he having already pleaded, Not Guilty. If you find that he is guilty of any the High Treasons laid to his charge, then you are to enquire what goods, lands or chattels he stood possessed of when he committed the said High Treasons; but if you find Not Guilty, you shall then enquire whether he did not fly for it; and if he did not fly for it, then you are to say so, and no more: therefore hearken to your evidence.

*Lilburne.* May it please your honour—

*Cryer.* If any man can give any Evidence to my lords the Justices of Oyer and Terminer, against Mr. John Lilburne, let him come in, and he shall be heard.

*Lilburne.* I desire to be heard to speak two or three words. I humbly desire the favour to speak two or three words. I humbly desire the favour to be heard two words.

*Lord Keble.* It is not a fit time; you shall be heard in your due time: but hear what the witnesses say first.

*Lilburne.* I conceive I am much wronged in saying that I pleaded Not Guilty, for, I pleaded no such plea; I appeal to the Court, and to all that heard me, whether I pleaded any such plea: for before I pleaded, the Court became engaged to me, to take no advantage of my ignorance of the formalities of the law; and promised to give me as much privilege as my lord duke of Hamilton and others enjoyed before the Court of Justice.

*Lord Keble.* We know all this.

*Lilburne.* Sir, by your favour, I pleaded conditionally, and now I make my absolute plea to the Indictment, which is this. That I except against the matter and form of it, matter, time and place, and humbly crave counsel to assign and plead to the errors thereof.

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*Lord Keble.* You must hear us, we hear you; a word is a great deal; these things we have taken perfect notice of, the Court is not ignorant of them; therefore they need not so suddenly be repeated to us again; you need not repeat these things; for I tell you again, they are all fresh in our memories, and that we have done we must maintain, or we have done nothing.

*Lilburne.* Truly it is requisite for me to say, that I am wronged, I had no such single plea; I plead a plea at large to the errors of the Indictment; and first now crave liberty of the law of England to have time and counsel assigned me.

*Lord Keble.* You shall have the laws of England, although you refuse to own them in not holding up your hand; for the holding up of the hand hath been used as a part of the law of England these five hundred years. Go on.

*Mr. ———.* (the Counsel that was an assistant to Mr. Prideaux).—My lord, the Prisoner at the bar stands indicted as a Traitor, for that he contriving, and maliciously intending not only to disturb the public peace, but also to bring the government of the nation, happily settled in a free state or commonwealth, without a king, or an house of lords, and the commons in parliament assembled to bring in disgrace and contempt amongst all good men; he did the first of this instant October, and divers times before and since in this city, falsely and maliciously, advisedly and traitorously, by writing, printing and openly declaring, in and by one Paper of his, called "A Salva Libertate," and by divers other Papers and Books, whereof one he calls, "An Impeachment of High-Treason against Oliver Cromwell and his son-in-law Henry Ireton;" and another Book of his, entitled, "An Out-cry of the Young Men and Apprentices of London," directed to all the private soldiers of the army, &c. A third, "A Preparative to an Hue and Cry after Sir Arthur Haslerig;" and a fourth, "The Legal Fundamental Liberties of the People of England revived:" That he did in these books publish, That the said government is tyrannical, usurped and unlawful; and that the commons in parliament assembled are not the supreme authority of this nation. He stands further indicted, That he, as a false traitor, did maliciously, advisedly and traitorously plot and contrive to raise force against the present government, and for the subversion and alteration of it; and for the fulfilling of his most malicious and traitorous designs, he did, in and by the said traitorous Books, falsely, maliciously and advisedly utter and declare several most false and scandalous, malicious and traitorous words and writings, that in the Indictment are particularly named and expressed. And thirdly, That as a traitor, not being an officer, nor a soldier, or a member of the army under the command of the now lord General Fairfax, he did most maliciously and traitorously endeavour to withdraw certain soldiers of that army

from their obedience to their superior officers, which are particularly named in the Indictment: And that for the full accomplishment of his contrivances and endeavours, he did maliciously, advisedly and traitorously publish and deliver the poisonous Book, called "An Impeachment:" and in particular directed by the Title of the Book to all the People of England, being for that end published by him to public view: In which Book are contained most false and scandalous, malicious, mutinous and traitorous expressions, as in the Indictment are set forth. And further, That in the said Book, which he called "An Impeachment," That the present government is tyrannical and usurped; and that the commons of England in parliament assembled are not the supreme authority. And he further stands indicted, and the jury further finds and presents, that by all these and other expressions written by him, and published by him in written papers and printed books, he hath falsely, maliciously and traitorously stirred up strife on purpose, and to the intent, to stir up and raise force against the present government, settled in the way of a commonwealth and free state, without king and lords, on purpose to subvert and destroy. And further, he hath also most traitorously endeavoured to withdraw the private soldiers from their obedience and subjection to their superior officers: And all this in manifest contempt of the laws of this commonwealth in that behalf made and provided, and to the hazard of the overthrow and utter subversion of the said government.

To this Indictment the gentleman hath pleaded Not Guilty, and hath put himself upon his country; and if we can prove this against his plea, it is at an issue.

*Lilburne.* I deny that, Sir; I never pleaded any such single plea as Not Guilty: And you gentlemen of the jury, I beseech you take notice he extremely wrongs me in saying so; for my plea was a conditional plea, and as a plea at large.

*Mr. Attorney.* My lords, and you gentlemen of the jury, you have heard the indictment read unto you, and you have heard it opened unto you; and you have heard what Mr. Lilburne says, That he did not plead Not Guilty: And I hope he is ashamed of his plea, now he hears the indictment opened unto him. My lord, in this indictment there are contained these several grand treasons:

The first is, That he hath advisedly, traitorously and maliciously published, that the government that is now established, by way of a free state or commonwealth, without either king or house of lords, is tyrannical, usurped and unlawful. And further, That the present parliament now assembled, are not the supreme authority of the nation.

The second is, That he hath plotted, contrived and endeavoured to stir up, and raise forces against the present government, and for the subversion and alteration of the same:

The third is this that relates to the army; you

have heard what his expressions have been, and they have been read unto you, concerning them and the rest, That he, not being an officer, or soldier, or member of the present army, hath offered to stir up mutiny in the army, and to withdraw the soldiers from their obedience and subjection to their superior officers, and thereby to stir them up to mutiny and discontent.

These are the main parts and substance of what I intend to charge him with in the evidence, to prove that which was contained in the indictment. My lord, you have heard, in what hath been read out of the indictment, what expressions they are; those that are traitorous to the public, and have been so declared, so judged, so executed, these are here Mr. Lilburne's engaged true friends: The parliament, the government, the authority of both parliament and army, they are tyrants, usurpers, mercenaries, janisaries, murderers, traitors, standing by their own power and swords, and over-ruling all by their wills: These are the expressions that he used. My lords, I shall not trouble you with any thing of aggravation; for, my lord, I do conceive, that the reading of the books themselves aggravates every thing against him; and I think there is no Englishman (as Mr. Lilburne so often styles himself to be) will own such words or acts as these are.

And truly, my lord, if I had read the books, and not known the person, I should not have thought he had been either a Christian, or a gentleman, or a civil man, to have given such base and bitter language; but, my lords, and you of the jury, I shall hold you no longer, the evidence being so plain, and the matter so foul, that it will not admit overmuch, or stand in need of any dispute; and to make it plain and clear to your judgments and consciences, there are witnesses in the court evidently to prove every thing that will stand in need to be proved for the indictment.

My lords, the words are maliciously, advisedly, and traitorously: I shall not catch at words, but, as himself says, what he prints is of mature and deliberate consideration; and such are his books in print, that himself hath either printed, or caused to be published.

The first that he is charged withal, is that which is called "An Outcry:" It hath a very dangerous title, and in the direction especially to the soldiers of the army; but especially to the private soldiers of the general's regiment of horse, that helped to plunder the true-hearted Englishmen, traitorously defeated at Burford; so that the rebels at Burford were Mr. Lilburne's dear friends. My lords, it hath not only a dangerous title, but was published at a dangerous time, yea, and for a dangerous end, which was to stir up the great mutiny that was in the city of Oxford. My lord, for the proof of this we shall offer this, That Mr. Lilburne himself was capt. Jones's associate in the publishing that book: For Mr. Lilburne and this captain Jones brought this book to the press to be printed. We shall offer unto you where he hath published it to soldiers of the army, to

engage them in a mutiny and discontent against their superior officers. Therefore in the first place call Thomas Newcombe.

*Thomas Newcombe* sworn.

*Justice Jermin.* Before you speak, look upon the prisoner first, whether you know him, or not.

*Mr. Attorney.* My lord, if you please, he may take the book in his hand, and see whether he printed it, and when he printed it, and who brought it to the press.

*Mr. Newcombe.* I printed of this book only the last sheet, not knowing where the former part of it was done; which book was brought to me by lieutenant. col. Lilburne and captain. Jones, which captain. Jones did agree with me in the price: I was stopped in the proceedings in it. I say that captain. Jones, together with lieutenant. col. Lilburne, did bring it to me, and that captain. Jones did agree with me in the price; but I was taken before I did perfect it: But captain. Jones did indent with me for the price. But this I must say, lieutenant. col. Lilburne came alone with the copy; and afterwards at night he came again, and had a proof of it; and that he was present when it was corrected.

*Mr. Attorney.* And when the first sheet was printed, then they came at night again, and examined the proof with captain. Jones and his corrector?

*Lord Keble.* And he brought the copy of the whole draught of the book unto you?

*Lilburne.* Sir, by your favour, if Mr. Pridenax have done with the witness, I crave my right by law to ask him some questions. In the first place, I desire he may be asked, Whether I was either reader of the original copy, or the overlooker of the printed proof?

*Mr. Newcombe.* You had a printed sheet of it, and that was all.

*Lilburne.* I desire to know whether I was either the reader of that he printed, or the looker upon the written copy?

*Mr. Newcombe.* You looked upon the sheet that was printed, captain Jones read the manuscript.

*Lilburne.* Ask him the question thus, Whether was I the corrector of the thing printed, or the looker-on upon the printed copy? And whether, or no, he can swear that printed sheet, that he says I had, was corrected and revised, and was a true and perfect sheet, according to the original?

*Mr. Newcombe.* It was a copy of the sheet before it was corrected or revised.

*Mr. Attorney.* And Mr. Jones did read the original, and lieutenant. col. Lilburne corrected the copy?

*Lilburne.* Under favour, you are mistaken: He says, that I cast my eye upon the copy; but doth not in the least say, that I corrected it. And therefore, Sir, you do abuse me, in going about to make him say more than his own conscience tells him is truth.

*Ld. Keble.* While the examination was, he saith you read the proof.

*Lilburne.* Sir, he says no such thing, by your favour.

*Ld. Keble.* Mr. Newcombe, was not Mr. Lilburne there the second time at night, and did he not look upon the copy?

*Mr. Newcombe.* That he did, my lord; But, my lord, I shall tell you the manner of our trade in this particular. The manner is, That after we have set a form of the letter, we make a proof of it, which proof we have a corrector does read: My corrector he had one, being he corrected it, and captain. Jones looked upon the manuscript. And lieutenant. col. Lilburne had a copy of the same sheet uncorrected; but he did not correct it, nor read to the corrector. There was two pulled off; the corrector had one, and Mr. Lilburne had the other; and captain Jones looked upon the manuscript, and read it to the corrector.

*Lilburne.* He has declared unto you, that he was taken printing the thing before it was perfected: I desire to know whether I was at his house to give any farther directions at all after it was taken.

*Mr. Attorney.* That is no thanks neither to you nor him.

*Lilburne.* I pray let him answer the thing: Let me have fair play above board. Sir, I beseech you let me hold him close to the question. He says he was taken before the sheet was perfected: Truly, I think they are his very words.

*Mr. Newcombe.* I said in my examination that it was a proof of that printed which you had.

*Lilburne.* I desire again to know this of him, Whether before he had printed or perfected that sheet he had doing, he was not taken, and both the forms?

*Ld. Keble.* Mr. Lilburne, you must desire us to ask him the question; and not you to demand it of yourself.

*Lilburne.* I shall, Sir.

*Mr. Newcombe.* It was before the forms were taken.

*Lilburne.* I ask you, Whether before the things were compleat and perfect, your forms were not both taken, and your person seized upon?

*Mr. Newcombe.* There were only some few copies printed, and then I was seized upon, and the forms taken away before I had perfected the sheet. But this, I say, He did not indent with me for the price; neither had I the copy from Mr. Lilburne's hands, but from captain Jones's hands.

*Justice Jermin.* You say that he had one proof, and Jones another: When was this you speak of? Give us the time as near as you can.

*Mr. Newcombe.* I cannot justly say the time; but as I remember, it was about seven or eight weeks since.

*Mr. Attorney.* Stand you aside: and call John Tooke, John Skinner, Thomas Lewis, John Hawkins, and John Merriman, witnesses sworn.

*Mr. Attorney.* John Tooke, do you declare

now your knowledge. That which I call him for, is to this purpose, that Mr. Tooke being a soldier of the army, one of them mentioned in the indictment, Mr. Lilburne delivered him one of the Outcries, on purpose to draw him from his obedience to his superior officers.

Lt. Keble. Shew him the book.

Mr. Tooke. I have seen the book; but I had not the book in my hand before.

Mr. Attorney. Tell what you know; that is all we ask you.

Mr. Tooke. About seven weeks ago, being at dinner with Thomas Lewis and John Smith, all soldiers, after dinner we met with lieutenant. col. Lilburne in Ivy-Lane; and Thomas Lewis knowing of him, took acquaintance of him.

Justice Jermin. All soldiers under my lord general Fairfax?

Mr. Tooke. Yes, Sir.

Justice Jermin. Go on.

Mr. Tooke. Mr. Lilburne asked me to go and drink a cup of beer: We did so. And so when we went in, he asked whether we had seen such a book as the Apprentices Outcry? And Mr. Lewis answered, That he had seen it in a man's hand. Then lieutenant. col. Lilburne said he had one in his pocket, that was given him; and if he pleased to accept of it, he would give it him. So told him he had thought to buy one of them, for he heard they were sold in the city; but he would accept of his. So Mr. Lilburne delivered it to Mr. Lewis.

Mr. Attorney. What did Master Lilburne say farther unto you?

Mr. Tooke. He said, That you soldiers keep us all in slavery.

Lilburne. I beseech you let me ask him one question.

Mr. Tooke. There was some to be sold; but I forgot the place.

Mr. Attorney. Did he name a place and person to you, where you might have some of them?

Mr. Tooke. He did name a place, but I have forgot it, where there were more books to be sold.

Lilburne. Sir, I beseech you let me ask you one question—

Ld. Keble. Mr. Lilburne, for your direction, you must make your question to us, and require us to ask him the question: and then if your question be fair, it shall not be denied you.

Lilburne. Then thus: Whatsoever this gentleman says of meeting him in Ivy-Lane, and desiring him to go to drink with me, yet I desire you to ask him, whether I did take notice or cognizance of any of them first? Or whether they did speak to me before ever I said any thing to them?

Lord Keble. To what end do you ask this?

Lilburne. Because in your indictment I am charged, that I went among the soldiers to seduce them from their obedience to their superior officers; when I have made it my endeavour to shun them as much as I can, and not to come nigh the place where I know

they are, if I can avoid it; no, although I meet with them, not to discourse with any of them, unless they begin first.

Lord Keble. I tell you this, which may direct you afterwards: Whatsoever began to discourse first, if you did give them the book afterwards, it is all one.

Lilburne. But, shall please you, I am upon my life; and by law I ought not to be denied to ask the witnesses that swear against me any question that I please, that I myself judge pertinent for my advantage.

Mr. Attorney. Call Thomas Lewis.

Thomas Lewis. And it shall please you, I am upon my oath to speak the truth; and I shall desire by the help of God so to do, and no more. One day, which I conceive to my remembrance was the 6th day of September, last, we being upon a guard at Paul's, went to an house to refresh ourselves; and when I came forth I met with lieutenant. col. John Lilburne, whom I had formerly known, and sometimes visited in his imprisonment, and whom I was very glad to see, having a little before heard as though some sudden accident or mischance had befallen him; and I did ask him how he did. He said unto me, he was well: And so with that says he, what, are you upon the guard? To my best remembrance, this was his expression; yet see whether it was he, or another that said it. As I take it, these were his words: Says he, I have almost forgotten you. Sir, I was known to you formerly, having sometimes been with you in the Tower. Says he, Will you go drink? If you please, we will: And so upon that we went to a place called the Red-Cross in Newgate-Market. And there we sitting down to drink, having not much discourse for the present, we sitting still, he asked me at length, have you heard of a book called the 'Outcry of the Apprentices'? Sir, said I, I have heard of it, and have a longing desire to buy one of them to read it; and my reason why I said so was, because I did understand it was to be sold at the exchange; there I intended to go and get one of them. Says he, I had one given to me; and if you will, I will give it unto you. So I received the book with thankfulness; and further expressing, which was something mean, it would save me a penny in buying of it. And I further intreated him, if he could direct me where I might buy some more of them. I have a friend, says he, in such a place; if you would go to him, and tell him that I am here, I should think myself beholden to you. Now the place's name was Martin's-Lane, but the man's name, whither I went, I have forgot, and the man too: I never heard of the man before nor since; so I told Mr. Lilburne. Now, he said to me, peradventure where you find that man, you may have some more of the books. Now these were the words, to my best remembrance and knowledge, as I desire to speak with a pure conscience.

Mr. Attorney. Mr. Lilburne gave you one of those books?

Mr. Lewis. Yes, Sir; and I put it into my pocket, and when I had done, Mr. ——— he will deliver him——

Whether there was any books or passages betwixt them? And upon which he told him, Yes; there is a book that Mr. Lewis has, that has such a title.

Mr. Attorney. What did you with the book?

Mr. Lewis. I delivered it to the lieutenant.

Mr. Attorney. The same book that you received from Mr. Lilburne you delivered to the lieutenant?

Mr. Attorney. What did lieutenant colonel Lilburne say to you concerning your pay? Did not he ask you, &c.

Lilburne. I pray, Sir, do not direct him what to say, but leave him to his own conscience and memory, and make him not for fear to swear more than his own conscience freely tells him is true.

Mr. Lewis. The discourse was thus: Says he, you soldiers, to my best remembrance, are the men that keep us all in slavery. Now what to conceive of that expression, I must leave that unto you. And as concerning our pay, he asked us, how is your pay? These were the words, or to that effect. But there was money come for us, and ready to be delivered out unto us.

Mr. Attorney. Call John Skinner: He was one of those that was in company, and can speak to it.

Mr. Skinner. To my best remembrance, and it shall please you, it was the beginning of September, I cannot justly tell what day, that I met with Mr. Lilburne in Ivy-Lane, near unto Paul's; and meeting with him, I was going towards the guard, and so was Mr. Lewis with me, being walking forth of the lane, having been refreshing ourselves. And near the end of the lane we met with lieutenant col. Lilburne, which lieutenant col. Mr. Lewis very well knew; and knowing of him, asked him how he did, and how it went on with him, in regard he had heard before he was in prison; so I did not take any heed what he said further. Neither do I know whether Mr. Lewis asked Mr. Lilburne to go with him to drink, or Mr. Lilburne asked him; but to the Red-Cross in Newgate-Market we went to drink. And Mr. Lilburne did ask Mr. Lewis, whether or no he had seen the book which was called the Apprentices Outcry. Mr. Lewis answered him, that he had not seen the book, (as I remember) but he had heard of that book that it was forth, and he did intend to buy one of them, in regard they were publicly sold abroad. Says Mr. Lilburne, I have such a book in my pocket, which was given me even now; and I will give it you, if you will.

Lilburne. I pray, let me hear two or three lines before.

Mr. Skinner. Whereupon you answered, and said, I have the book in my pocket, and it

was given me, and I will give it you. And Mr. Lewis received it, and that was all. And presently I went away.

Mr. Prideaux. You hear, gentlemen of the jury, that it is the same book that he received from the hands of lieutenant col. John Lilburne.

Lilburne. My lord, I beseech you hear me before the witnesses go: and he that was sworn before, I desire to ask him this question, whether or no that this is the very book that is mentioned in the indictment? And whether or no they have examined the words of it with the indictment?

Mr. Prideaux. You need not; that shall be proved presently. Mr. Skinner, That book which Mr. Lilburne gave you, what did you with it?

Mr. Skinner. It was delivered unto my lieutenant, who stands there.

Lieut. It was delivered unto my captain upon the guard.

Capt. Merriman took the book into his hand, and said, This individual Book, signed in several places by me, I delivered to Mr. Frost, secretary to the Council of State; and Mr. Frost caused me to sign it in several places, whereby it could not be mistaken; and that is the very individual book.

Mr. Prideaux. My lords, and you gentlemen of the jury, we have thus far gone in the evidence: that Mr. Lilburne brought the last sheet of it to the press the first time he came with capt. Jones; and he came the second time with him to examine it; that is, he had a printed copy, that was then printing, to be printed, and was the corrector for the press, reading the original copy: so far is he privy to the printing of the book. In the next place, three witnesses (soldiers of the army) swear he gave them one of those books, and one of them gave it to his lieutenant, and the lieutenant to the captain; and the captain swears, this individual book is that which master Lilburne gave into the hands of Mr. Lewis. What can be more plain than this? I pray you judge. For here is plain testimony of Mr. Lilburne's delivering this Outcry to the three soldiers, and one of them to his lieutenant, and his lieutenant to his captain, and his captain to Mr. Frost, with marks upon it: so this is by consequence proved unto you, this is the individual book that Mr. Lilburne, prisoner at the bar, gave to the three soldiers; and which is to be made use of when you have occasion upon the evidence, to read it, as now it is in the court with you.

Lilburne. By your favour, I have had no answer to the Question, that I humbly craved an answer to; which is, Whether the soldiers are positively able to swear that this is the individual book which they say they had from my hands? And whether they are able to swear that this individual book is a true and exact copy without addition or subscription, of that original manuscript that the printer saith capt. Jones delivered to his hands, which, he saith, I had an uncorrected sheet of?

Mr. *Prideaux*. We shall clear that to you when we come to make use of it.

*Lilburne*. I beseech you, gentlemen of the jury, to take notice of my question, and what I am denied.

Mr. *Prideaux*. The next thing that is charged upon him is a paper written and entitled, "A Salva et Libertate." My lord, I shall open the thing to you. Being directed (my lord) for the prosecution of Mr. *Lilburne*, and having things of a very high concernment that are charged against him, I did by word of mouth send to have him come to me; which I understood he did decline, because the lieutenant had no warrant. The lieutenant of the Tower was pleased to acquaint me with it; and I thereupon directed my warrant to the lieutenant to bring him before me. And Mr. *Lilburne*, &c.

*Lilburne*. My lord,\* and please your honours, thus: if we be upon matter of fact, let us come to it: let us have no introduction to teach the witnesses what to say, what beyond their own consciences dictate unto them.

Mr. *Prideaux*. I shall go no further in it; let the lieutenant of the Tower speak himself.

*The Lieutenant of the Tower sworn.*

Mr. *Prideaux*. Lieutenant of the Tower, you are questioned about the "Salva Libertate" that Mr. *Lilburne* delivered unto you: have you the original?

*Lieut. Tower*. Yes, Sir, I have.

Mr. *Prideaux*. How came you by it?

*Lieut. Tower*. I shall be short in what I say, because I will not trouble the court.

*Lilburne*. Let me hear you, then.

*Lieut. Tower*. Being abroad, there was a message left with my servants, that I should bring up lieutenant-colonel *Lilburne* to Mr. Attorney's chamber in the Temple; and when I came in, I had notice of it. I did then send to lieutenant-colonel John *Lilburne* to let him know what command I had received from the Attorney-general, the next day to carry up lieutenant-colonel John *Lilburne* to the Attorney-general's chamber. But lieutenant-colonel *Lilburne* not well understanding whether I had a written warrant, or no; but before he came at home he recalled himself, and came back, and desired the sight of my warrant. I told you before I had no warrant, but by word of mouth. Why, says he, do you think I will go upon a verbal warrant? Saith he, I will not go unless you force me. But the next day Mr. Attorney-general was acquainted that he refused to come without a warrant. When the warrant was made, I met with lieutenant-colonel *Lilburne* about ten of the clock in the Tower, who intreated me to let him see it. I shewed it him, he read it, he desired a copy of it, takes it; which when he had, he went from me; and about two hours after he came to me, about one of the clock, and said,

\* This was the first or second time that Mr. *Lilburne*'s tongue slipped the calling him Lord.

I pray receive this from me; for (says he) I do intend not to own the authority and power of that gentleman that sent me the warrant. Whereupon I told him, I would shew this same to the Attorney-general: why, says he, I give you it to that purpose. When the time came, lieut. col. *Lilburne* did go along with me in an orderly, civil way: I had no body but my man; for I told him, I will take no body but my man, if you will engage yourself to me that you will return peaceably: which he did; and so we went very orderly to Mr. Attorney's chamber; which is all for that I can say.

Mr. *Attorney*. If you please, that the lieutenant may upon his oath declare, whether that be the true original he had from Mr. *Lilburne*'s own hands, or no?

*Lieut. Tower*. It was never out of my custody since he gave it me.

Lord *Keble*. Mr. *Lilburne*, you do acknowledge it to be your own hand-writing? Shew it him.

*Lilburne*. I am too old with such simple gins to be caught; I will cast mine eyes upon none of your papers, neither shall I answer to any questions that concern myself: I have learned more law out of the Petition of Right, and Christ pleading before Pilate, than so.

Mr. *Attorney*. Would you had learnt more gospel!

Judge *Jermin*. You may answer a question, whether it be true or false; and confess, and glorify God.

*Lilburne*. I have said, Sir; prove it: I am not to be caught with such fooleries.

Lord *Keble*. You see the man, and the quality of the man; this is the paper that he delivered into his own hand, and that is sufficient, as well as if it was of his own hand-writing.

*Lilburne*. Good Sir, your verbal bench-law is far short of your written text in your own law-books.

Judge *Jermin*. Put it into the court.

Lord *Keble*. Your writing or not writing is nothing; you delivered the book.

*Lilburne*. Sir, I desire to know in what place, whereabouts in the Tower of London, the lieutenant of the Tower saith he received this paper.

Lord *Keble*. Let him name the place where it was delivered.

*Lieut. Tower*. The place was at the steps, at the bottom of the narrow passage at my garden-end, in the cart-way where the carriages come up.

*Lilburne*. Whether is that place in the liberties of London, or is it part of the county of Middlesex?

*Lieut. Tower*. The Tower is in London,\* some part of it, and some part in Middlesex; but unto which place that part of the Tower

\* But it is sure that place is in Middlesex, as was resolved in Sir Tho. Overbury's Case. See Coke's 3d part Inst. fol. 130, chap. Indictment.

belongs, I am not able certainly to say, but it hath commonly been reputed in Middlesex.

*Mr. Attorney.* My lord, you may see the valiantness of this champion for the people's liberties, that will not own his own hand; although I must desire you, gentlemen of the jury, to observe that Mr. Lilburne implicitly confesseth it.

*Lilburne.* Sir, I deny nothing: and what now can be proved mine, I have a life to lay down for the justification of it, but prove it first.

*Mr. Attorney.* My lord, the next thing to prove the charge against him is a very high one, it is styled Mr. Lilburne's, and his name is to it: it is intitled, "An Impeachment of High Treason against Oliver Cromwell, and his son-in-law Henry Ireton, esq. late members of the late forcibly dissolved house of commons, presented to public view by lieutenant. col. John Lilburne, close prisoner in the Tower of London." My lord, I doubt he will not own it; but yet, my lord, he may be asked the question.

*Lilburne.* I shall deny nothing I do: And yet I have read the Petition of Right, Sir, that teacheth me to answer to no questions against or concerning myself, and I have read of the same to be practised by Christ and his Apostles.

*Mr. Attorney.* You will not own it, the book you have read?

*Lilburne.* You may make your advantage of it.

*Mr. Attorney.* We shall prove it; call Witnesses.

*Thomas Daffern, Richard Lander, Marshal, Major Hawksworth, Governor of Warwick Castle; all sworn.*

*Mr. Attorney.* Mr. Daffern, if you please he may be asked where he met Mr. Lilburne, the time when, what book was given him, and to what purpose it was given him.

*Mr. Daffern.* Why, it was upon the 12th of August last. Having been in Southwark, I met with lieutenant. col. Lilburne upon the bridge, I went back with him to his house at Winchester House in Southwark: He had leave to visit his family at that time, being very sick, and I told him I was going into Warwickshire the next day; and he having heard that col. Ayres was then removed from Oxford to Warwick Castle, he gave me a book to carry to him, and I delivered it to him at Warwick Castle.

*Mr. Attorney.* The Book that he gave you, you gave to the governor: Did you see any more of them?

*Mr. Daffern.* I never saw any of them but that, which was both the first and the last I have seen of them.

*Mr. Attorney.* Lander the marshal was present at that time, was he not?

*Mr. Lander.* That I was; and I had it from him, and I delivered the Book to major Hawksworth the governor.

*Mr. Attorney.* Major Hawksworth, what did you do with the Book?

*Major Hawksworth.* I sent it to col. Purefoy, in a paper sealed with three or four seals.

*Mr. Attorney.* Call colonel Purefoy.

*Col. Purefoy sworn.*

*Lilburne.* I hear not one word: Under favour, but one word, I crave but one word, I have an exception. First, col. Purefoy is one of those that call themselves the Keepers of the Liberties of England; and for committing crimes against them I am indicted, and he is one of them, and therefore a party, and in that respect in law he can be no witness against me. It would have been very hard for the king to have been a witness against that man that was indicted for committing crimes against him; such a thing in all his reign was never known.

*Col. Purefoy.* I received this Book, sealed in a letter, from the governor of Warwick Castle, major Hawksworth; I know his hand, and I know the day he sent me this very individual Book; and my hand is at it, and the governor who sent it up to me, which I declare to be the very individual Book that I received from him.

*Mr. Attorney.* Mr. Lilburne, you are mistaken; col. Purefoy is a member of parliament, he is none of the Keepers of the Liberties of England. But why will you put us to all this trouble to prove your Books, seeing your hand is to them? My lord, I had thought the great champion of England would not be ashamed to own his own hand.

*Lilburne.* I have answered once for all: I am upon Christ's terms, when Pilate asked him whether he was the Son of God, and adjured him to tell him whether he was or no; he replied, 'Thou sayest it.' So say I, Thou Mr. Prideaux sayest it, they are my Books: But prove it; and when that is done, I have a life to lay down to justify whatever can be proved mine.

*Judge Jermin.* But Christ said afterwards, 'I am the Son of God.' Confess, Mr. Lilburne, and give glory to God.

*Lilburne.* I thank you, Sir, for your good law, but I can teach myself better.

*Mr. Attorney.* Here Mr. Lilburne makes a book, which was given to the hands of Mr. Daffern by Mr. Lilburne himself; Mr. Daffern he swears, that the same book he gave to col. Ayres; Mr. Lander the marshal of the garrison of Warwick swears, that the same book Daffern gave to col. Ayres, he had from him, and gave to major Hawksworth the governor; the governor swore, that that book he received from the marshal, he sent sealed up in a letter to Mr. Purefoy; who also swears, that that same book he set his hand to it to know it again by, and that the individual book that is now given into your hands, is the same book that was delivered to him: The Title is, "An Impeachment of High Treason against Oliver Cromwell, esq."

*Lilburne.* Sir, I wonder you are not ashamed so far to press the testimony beyond that

they themselves swear. Mr. Daffern doth not name the book at all that was given to him, neither doth he swear it to be mine; and therefore, Sir, you abuse yourself, the court; the witness, and me too.

*Attorney.* Master Lilburne, I have done you right in it, and no wrong at all; for col. Purefoy doth name it. The next is a very dangerous book of his, called, "A Preparative to the Hue and Cry after Sir Arthur Haslerig." Mr. Lieutenant of the Tower, you are upon your oath, I pray you speak your knowledge to that.

*Lieut. of Tower.* My lord, it is true, lieutenant Lilburne gave me in the Tower such a Book; but I cannot say, whether that be the same book that he delivered to me, or no: I have such a book also at home, but I am not able to say that is the very book he gave me; and whether this be the same book, I know not.

*Mr. Prideaux.* Call Mr. Nutleigh and Mr. Radney.

Master Nutleigh sworn.

*Lilburne.* I pray let the Witnesses stand here, the Jury say they cannot hear them.

Edward Radney called and sworn.

*Lilburne.* I pray you, let me know what these gentlemen are; I do not know them, neither can I remember at present that I ever saw them before.

*Lord Keble.* You see they look like men of quality.

*Mr. Prideaux.* They are my servants, Mr. Lilburne.

*Mr. Nutleigh.* My lord, and please your lordship, the 14th of September last, the prisoner at the bar, lieutenant colonel John Lilburne, being before Mr. Attorney-General, and I being by in the chamber, (a) I did see him deliver this book to Mr. Attorney-General, this specific book; and he did own it, and called himself the author of it, save only the erratas of the printer.

*Lilburne.* The last clause, I beseech you, Sir; the Jury desires to hear the last clause.

*Mr. Nutleigh.* My lord, he said he was the author of that Book, (b) the erratas of the printer excepted.

*Lilburne.* Let him be asked this question, Whether in that expression, 'Saving the Erratas of the Printer,' there did not follow these words, 'which are many?' I desire to know whether there were not such words, or not?

*Mr. Radney.* I was present, my lord, when

(a) "But Mr. Lilburne hath been heard to profess, he saw not these gentlemen in the chamber that he discoursed with Mr. Prideaux in, although he looked divers times about him."

(b) "That is an errant lie; for divers that heard the words, aver them to be thus: 'It is 'my book, and I will own it;' and so it might be, although he had bought it.'" Orig. Edit.

the prisoner at the bar presented this book to Mr. Attorney, and owned it, saving the Erratas of the Printer.

*Lilburne.* Were there no more words?

*Mr. Radney.* Not to my remembrance.—[And so said they both].

*Lieut. of Tower.* My lord, I was present at the same time, when lieutenant col. Lilburne did present a book to Mr. Attorney-General, with such a Title as this: And truly if I be not much mistaken, there was used by him these words, 'which are many.' Thus it was in the whole: Says he, 'Here is a book which is 'mine, which I will own, the erratas or errors 'of the printer excepted, which are many;' and if I mistake not very much, those are the very words Mr. Lilburne said.

*Mr. Attorney.* My lords, and you gentlemen of the jury, you see that here are three witnesses, and they do all agree in this, that master Lilburne, the prisoner at the bar, did deliver this book to me, owning it as his (c) own: the errors or erratas of the printer only excepted. And as for that clause, 'which are 'many,' only the lieutenant of the Tower swears to that singly; and therefore I desire it may remain in court, as that individual Book that they saw master Lilburne give me. But, my lord, there is another Book in the Indictment, intitled, "The legal fundamental Liberty of the People of England revived and asserted; Or, An Epistle written the 8th of June, 1649, by lieutenant col. John Lilburne, to Mr. William Lenthall, Speaker to the remainder of those few knights, citizens, and burgesses, that col. Thomas Pride, at his late Purge, thought convenient to leave sitting at Westminster." My lords, for this book, it owns master Lilburne, if he will own it, it hath his name to it; But I have my lesson from him; my lord, he will own nothing; he will publish enough, but, my lord, he will not own it when he comes to be questioned for it; that is not the true principle of a true Christian, nor an Englishman, nor a gentleman.

*Lilburne.* I deny nothing, by your favour.

*Mr. Attorney.* And confess as little. My lord, for this you have two books in proof before you: The Preparative to the Hue and Cry," and the "Salva Libertate" owns these very individual Books: For the "Preparative to the Hue and Cry," in the marginal note at the second page, owns and avows this book, called, "The Legal Fundamental," &c. to be master Lilburne's. And master Lilburne himself did own "the Preparative to the Hue and Cry" before three witnesses to be his: and therefore the "Salva Libertate," Mr. Lieutenant of the Tower hath sworn that he received it from his own hands. My lords, as for this book the "Salva," which be

(c) "So is an ox a man buys with his money, it is his own; and so is a gold ring he finds, after he hath found it, it is his own: And yet it doth not follow, that the owner either begot the ox, or made the gold ring." Orig. Edit.

does not acknowledge, we shall read the words in the indictment, although it had been as ingenious for master Lilburne to have confessed it, as for us to have proved it: And for the proof of it, read the title.

*Clerk.* The title read: "A Preparative to an Hue and Cry after Sir Arthur Haslerig, a late member of the forcibly dissolved house of commons; and now the present wicked, bloody, and tyrannical governor of Newcastle upon Tyne."

*Mr. Prideaux.* Read the marginal note in page 2.

*Clerk.* Page 2, in the margin: "That those men that now sit at Westminster are no parliament, either upon the principles of law or reason: See my argument and reasons therefore, in my second edition of my book of the 8th of June 1649, intitled, "The Legal Fundamental Liberties of the People of England, revived and asserted," p. 48, 49, to 63."

*Mr. Attorney.* This book hath Mr. Lilburne's name to it, and here in this his Hue and Cry he owns it, and the third page in the margin hath it again.

*Clerk.* Page 3. "Peruse carefully, I intreat you, the quotations in the 6th and 8th pages of my forementioned Impeachment of High Treason against Cromwell: As also of the 12th and 15th pages of the second edition of my forementioned book, dated the 8th of June, 1649, intitled, "The Legal Fundamental Liberties," &c."

*Mr. Attorney.* Read the fourth in the body of the book.

*Clerk.* Page 4. "At which trial, by strength of arguments, I forced the judges openly to confess, that generals were nothing in law: See also the second edition of my book of the 8th of June, 1649, intitled, "The Legal Fundamental Liberties of the People of England revived, asserted, and vindicated," pag. 49."

*Lilburne.* Let him speak whether it be 29 or 49.

*Clerk.* Forty-nine (but there is not so many pages in the book).

*Mr. Attorney.* My Lord, here is a "Salva Libertate," which is his own book, though he will not own it. My lord, I had thought the great champion of England for the people's liberties, would never have been so unworthy as not to have owned his own hand: but read in the 24th page of the "Salva" in his own written hand.

*Clerk.* Page 24. "I have by almost eight years dear-bought experience found the interest of some of my forementioned judges to be too strong for me to grapple with, and the only cause, to my apprehension, that all this while keeps me from my own." And in the Margin he saith; "See also the second edition of my forementioned book, intitled, "The Legal Fundamental Liberties of the People of England revived, &c."

*Mr. Attorney.* Now, my lord, there is the "Salva Libertate" that was given from his own

hand, that owns it; I mean this Book, called "The Legal Fundamental Liberties," &c.

*Mr. Attorney.* Read the Title of it.

*Clerk.* "A Salva Libertate sent to col. Francis West, Lieutenant of the Tower of London, on Friday the 14th of September, 1649, by Lieut. Col. John Lilburne."

*Mr. Prideaux.* Read where it is marked.

*Clerk.* "But if you would produce unto me a written Warrant which hath some more face of legal magistracy in it than verbal commands, and according to my right and privilege let me read it; I would go with you either by land or water as you please, because I was in no capacity to resist you: Although I then told you I judged a Paper-Warrant (although in words never so formal) coming from any pretended power or authority in England now visible, to be altogether illegal; because the intruding general Fairfax, and his forces, had broke and annihilated all the formal and legal magistracy of England, yea, the very Parliament itself; and by his will and sword (absolute conqueror like) had most tyrannically erected, set up, and imposed upon the free people of this nation, a Juncto, or mock-power sitting at Westminster, whom he and his associates call a parliament; who, like so many armed thieves and robbers upon the highway, assume a power by their own will, most traitorously to do what they like."

*Mr. Attorney.* That is not the place, look towards the latter end.

*Clerk.* Then here it is: "Sure I cannot chuse but acquaint you, that I have long since drawn and published my plea against the present power, in my second edition of my book of the 8th of June 1649, intitled, "The Legal Fundamental Liberties of the People of England revived, asserted, and vindicated;" which you may in an especial manner read in the 43d, 44th, 45th, to the 49th page: Which by the strength of the Lord God omnipotent, my large experienced help in time of need, I will seal with the last drop of my blood."

*Mr. Attorney.* My lord, for the book called "The Legal Fundamental Liberties of England," his name is to the book; but I shall not put much weight upon that: But in others of his books, as in his "Preparative to an Hue and Cry," which he owns, and which is proved he owns by three witnesses, in several places of that book he owns this as his book, viz. "The Legal Fundamental Liberties of England revived," &c. he calls it mine, and "his forementioned Book:" And in his "Salva Libertate" he owns it again, gives it the very date, and the very title that is in this book. My lords, we have done with this. My lords, now I shall go on to make use of it, and to shew (my lord) out of these books his words and language, to make good the charge that hath been read in the indictment against Mr. Lilburne. My lords, if you please, for that I shall begin first in reading to the jury the very act itself, which makes the fact to be treason.

My lord, for that, here is the act that doth declare the commonwealth for the future to become hereafter a free state; and the other declaring that fact to be treason, that shall say it is tyrannical or unlawful. These are general acts which need not to be proved; but if the prisoner does desire it, we shall prove it.

*Clerk.* Die Lunæ, 14 May, 1649. Ordered by the commons assembled in parliament.

*Lilburne.* Hold, Sir! Prove your act first, whether it be an act of parliament.

*Mr. Attorney.* My lords, I shall not struggle with Mr. Lilburne in plain terms; but I thought when acts were published, the courts of justice were bound in duty to take notice of them: But if it be so he will have it proved, we will; although it be but a slender cavil, for this is one of the published copies.

*Lilburne.* But under your favour, Mr. Prideaux, as there may be counterfeit money (which we see there is every day), so there may be counterfeit statutes too; and this may be one, for any thing I know; therefore I desire it may be proved to be a true statute or act of parliament.

*Mr. Nuttleigh.* This is a true copy of the act of parliament, which I examined with the record.

*Lilburne.* The record! Where is that to be found?

*Mr. Nuttleigh.* At Westminster, with the Clerk of the Parliament.

*Lilburne.* Is this gentleman able to depose it to be a true law in all the parts of it? For by the laws of England, the people are not to take any notice of acts made, but by a parliament; neither are they to take notice of those acts that are not proclaimed. Sir, I beseech you let me know where the record and rolls are, and where he examined this; and whether he is able to swear, whether they have been proclaimed in every hundred and market-town, according to the old, and not yet repealed law of England.

*Lord Keble.* At Westminster, he tells you.

*Lilburne.* I beseech you, where at Westminster?

*Lord Keble.* The clerks of the parliament are known to the city of London here, you know it well enough.

*Lilburne.* That is no answer to my questions: I pray let me have fair play; for it is a question to me, whether the books of the clerk of the house of commons be a (a) record in law, or no.

*Lord Keble.* Read, clerk.

*Clerk.* An Act of the 14th of May 1649, declaring what offences shall be adjudged Treason.

‘Whereas the Parliament hath abolished the kingly office in England and Ireland, and in

(a) “And well might be: for Mackwel, in his “Manner of passing of Statutes,” in his preface thereunto, saith, That the Commons had no Journals at all before Edward the sixth’s time.” Orig. Edit.

‘the dominions and territories thereunto belonging, and hath resolved and declared that the people shall for the future be governed by its own representatives, or national meetings in council, chosen and intrusted by them for that purpose; hath settled that government in the way of a commonwealth and free state, without king or house of lords: Be it therefore enacted by this present parliament, and by the authority of the same, that if any person shall maliciously or advisedly publish, by writing, printing, or openly declaring, That the said government is tyrannical, usurped, or unlawful: or that the Commons in parliament assembled are not the supreme authority of this nation; or shall plot, contrive, or endeavour to stir up or raise force against the present government, or for the subversion or alteration of the same, and shall declare the same by any open deed: that then every such offence shall be taken, deemed, and adjudged by the authority of this present parliament to be High Treason. And whereas the Keepers of the Liberty of England, and the Council of State constituted, and to be from time to time constituted, by authority of parliament, are to be, under the said representatives in parliament, intrusted for the maintenance of the said government with several powers and authorities, limited, given, and appointed unto them by the parliament: Be it likewise enacted by the authority aforesaid, That if any person shall maliciously and advisedly plot, or endeavour the subversion of the said Keepers of the Liberty of England, or the Council of State, and the same shall declare by any open deed; or shall move any person or persons for the doing thereof, or stir up the people to rise against them, or either of them, their or either of their authorities: that then every such offence and offences shall be taken, deemed, and declared to be high treason.

‘And whereas the parliament, for their just and lawful defence, have raised and levied the army and forces under the command of Thomas lord Fairfax, and are at present necessitated, by reason of the manifold distractions within this commonwealth, and invasions threatened from abroad, to continue the same; which under God must be the instrumental means of preserving the well-affected people of this nation in peace and safety: Be it further enacted by the authority aforesaid, That if any person, not being an officer, soldier, or member of the army, shall plot, contrive, or endeavour to stir up any mutiny in the said army, or withdraw any soldiers or officers from their obedience to their superior officers, or from the present government, as aforesaid; or shall procure, invite, aid, or assist, any foreigners or strangers to invade England or Ireland; or shall adhere to any forces raised by the enemies of the Parliament, or Commonwealth, or Keepers of the Liberties of England; or if any person shall counterfeit the Great Seal of England (for the time being) used and appointed by authority of parliament: That

then every such offence and offences shall be taken, deemed, and declared by the authority of this parliament, to be high treason; and every such person shall suffer pain of death, and shall forfeit unto the Keepers of the Liberty of England, to and for the use of the commonwealth, all and singular his and their lands, tenements and hereditaments, goods and chattels, as in case of high treason hath been used by the laws and statutes of this land, to be forfeit and lost. Provided always, That no persons shall be indicted and arraigned for any of the offences mentioned in this act, unless such offenders shall be indicted or prosecuted for the same within one year after the offence committed.

Mr. Prideaux. Read the other Statute.

Clerk. Tuesday, 17 July 1649. Ordered by the Commons assembled in Parliament, That this Act be forthwith printed and published. Hen. Scobell, Cler. Parl.

*An Act declaring what Offences shall be adjudged Treason.*

Whereas the Parliament hath abolished the kingly office in England and Ireland, and in the dominions and territories thereunto belonging; and having resolved and declared, that the people shall for the future be governed by its own representatives, or national meetings in council, chosen and entrusted by them for that purpose, hath settled the government, by way of a Commonwealth, and Free State, without king or house of lords: Be it enacted by this present Parliament, and by the authority of the same, That if any person shall maliciously or advisedly publish by writing, printing, or openly declaring, That the said government is tyrannical, usurped or unlawful; or that the commons in parliament assembled are not the supreme authority of this nation; or shall plot, contrive or endeavour to stir up, or raise force against the present government, or for the subversion or alteration of the same, and shall declare the same by any open deed; that then every such offence shall be taken, deemed, and adjudged by authority of this parliament, to be high treason. And whereas the Keepers of the Liberties of England, and the Council of State, constituted and to be from time to time constituted by authority of parliament, are to be, under the said representatives in parliament, entrusted for the maintenance of the said government with several powers and authorities limited, given and appointed unto them by the parliament: Be it likewise enacted by the authority aforesaid, That if any person shall maliciously and advisedly plot or endeavour the subversion of the said Keepers of the Liberties of England, or the Council of State, and the same shall declare by any open deed, or shall move any person or persons for the doing thereof, or stir up the people to rise against them, or either of them, their, or either of their authorities; that then every such offence and offences shall be taken, deemed, and de-

clared to be high treason. And whereas the parliament, for their just and lawful defence, hath raised and levied the army and forces now under the command of Thomas lord Fairfax, and are at present necessitated by reason of the manifold distractions within this commonwealth, and invasions threatened from abroad, to continue the same, which, under God, must be the instrumental means of preserving the well-affected people of this nation in peace and safety: Be it further enacted by the authority aforesaid, That if any person, not being an officer, soldier, or member of the army, shall plot, contrive or endeavour to stir up any mutiny in the said army, or withdraw any soldiers or officers from their obedience to their superior officers, or from the present government, as aforesaid; or shall procure, invite, aid or assist any foreigners or strangers to invade England, or Ireland, or shall adhere to any forces raised by the enemies of the Parliament, or Commonwealth, or Keepers of the Liberty of England: or if any person shall counterfeit the great seal of England, for the time being, used and appointed by authority of parliament: that then every such offence and offences shall be taken, deemed and declared by authority of this parliament to be high-treason; and every such person shall suffer pains of death, and also forfeit unto the Keepers of the Liberty of England, to and for the use of the commonwealth, all and singular his and their lands, tenements, and hereditaments, goods and chattels, as in case of high-treason hath been used by the laws and statutes of this land to be forfeit and lost. Provided always, that no persons shall be indicted and arraigned for any the offences mentioned in this act, unless such offenders shall be indicted and prosecuted for the same within one year after the offence committed. And be it further enacted by the authority aforesaid, that if any person shall counterfeit the money of this commonwealth, or shall bring any false money into this land, counterfeit, or other like to the money of this commonwealth, knowing the money to be false, to merchandise or make payment, in deceit of the people of this nation; or if any person shall hereafter falsely forge, and counterfeit any such kind of coin of gold or silver as is not the proper coin of this commonwealth, and is or shall be current within this nation, by consent of the parliament, or such as shall be by them authorized thereunto; or shall bring from the parts beyond the seas into this commonwealth, or into any the dominions of the same, any such false and counterfeit coin of money, being current within the same, as is aforesaid, knowing the same money to be false and counterfeit, to the intent to utter or make payment with the same, within this commonwealth, by merchandise or otherwise; or if any person shall impair, diminish, falsify, clip, wash, round or file, scale or lighten, for wicked lucre or gain-sake, any the proper

‘ monies or coins of this commonwealth, or the dominions thereof, or of the monies or coins of any other realm allowed and suffered to be current within this cotamonwealth, or the dominions thereof: that then all and every such offences abovementioned, shall be, and are hereby deemed and adjudged high-treason; and the offenders therein, their counsellors, procurers, aiders and abettors, being convicted according to the laws of this nation of any of the said offences, shall be deemed and adjudged traitors against this commonwealth, and shall suffer and have such pains of death and forfeitures, as in case of high-treason is used and ordained. Provided always, and be it enacted by the authority aforesaid, that this not touching the monies and coins aforesaid, or any thing therein contained, nor any attainder of any person for the same, shall not in any wise extend, or be judged to make any corruption of blood to any the heir or heirs of any such offender, or to make the wife of any such offender to lose or forfeit her dower of or in any lands, tenements or hereditaments, or her title, action or interest in the same.’

*Mr. Attorney.* My lords, and you Gentlemen of the Jury, you have heard these laws read unto you: the clauses that we are to make out in proof against Mr. Lilburne, are these: That if any person shall maliciously or advisedly publish by writing, printing, or openly declaring, that the said government is tyrannical, usurped or unlawful; or that the commons in parliament assembled are not the supreme authority of this nation, are traitors: these we shall join together with his books. My lord, you are here in court, and have received the proofs against him; and we shall now make it out, that he hath done what this statute forbids, out of his own books that have come from himself, as the author of them. My lord, we shall begin with that charge against him, in declaring the government to be tyrannical, usurped and unlawful; and for that end, see his Impeachment of lieutenant-general Cromwell, &c. p. 8.

*Justice Jermin.* Mr. Lilburne, doth your paper of the 17th of May agree with that which was read, or no?

*Lilburne.* No, Sir; I conceive, Sir, you asked me whether this act I have in my hand do agree with that which was read?

*Justice Jermin.* Yes, Sir, I do.

*Lilburne.* It does not.

*Justice Jermin.* Then you will make use of it by and by?

*Lilburne.* I, Sir, intend so, if you will let me.

*Mr. Attorney.* My lord, the first is, That Mr. Lilburne hath declared the present government to be tyrannical, usurped, and unlawful: and that ‘in ipsissimis verbis,’ that he hath so declared, in a very high way, in the very words: so his book entitled, “An Impeachment of High Treason against Oliver Cromwell, and his son-in-law Henry Ireton, &c.” Read fol. 8.

*Clerk.* Fol. 8. ‘Yea, and the absolute keeping up of a perpetual and everlasting army, under which the people are absolute and perfect slaves and vassals, as by woful and lamentable experience they now see they perfectly are; which slavery and absolute bondage is like daily to increase under the present tyrannical and arbitrary, new erected, robbing government.’

*Mr. Attorney.* And so, my lord, it is here expressed to be a tyrannical and arbitrary government, which are expressly within the words of the law; for they are ‘a tyrannical government.’ My lords, we shall not stick here with him, but you shall see the whole course of all his pen’s writing hath been to this purpose: that goes very far, my lord; see the title-page of the last book.

*Clerk.* Title-page. ‘Before a legal magistracy, when there shall be one in England, which now in the least there is not.’

*Mr. Attorney.* See fol. 1.

*Clerk.* Page 1. ‘I have fully, both by law and reason, undeniably and unanswerably proved, that the present Juncto sitting at Westminster are no parliament at all in any sense, either upon the principles of law or reason, but are a company of usurping tyrants and destroyers of your laws, liberties, freedoms and proprieties, sitting by virtue of the power and conquest of the sword.’

*Mr. Attorney.* Read the Title-page of the same Book.

*Clerk.* “An Impeachment of High Treason against Oliver Cromwell, and his son-in-law Henry Ireton, esquires, members of the late forcibly dissolved house of commons; presented to public view, by lieutenant-colonel John Lilburne, close prisoner in the Tower of London, for his real, true and zealous affections to the liberties of his native country.” In which following discourse or impeachment he engageth, upon his life, either upon the principles of law (by way of indictment, the only and alone legal way of all trials in England) or upon the principles of parliaments antient proceedings, or upon the principles of reason (by pretence of which alone they lately took away the king’s life) before a legal magistracy, when there shall be one again in England, which now in the least there is not.

*Mr. Attorney.* Indeed, my lord, and you of the jury, Mr. Lilburne is a very great rooter, not a leveller, but a rooter to root out the laws of England, by the roots.

*J.—.* There is not—

*Lilburne.* By your favour, Mr. Prideaux, I knew the time when others said it as well of you; and it is not long since you were penned down in a black bill, to my knowledge, as unsavoury salt, with many others, to be thrown out of the House of Commons. I pray, Sir, whether were those rooters that went about to root up that house by force of arms, or Mr. Prideaux and others to give them cause, at least in their apprehensions?

*Mr. Attorney.* My Lord, a legal magistracy

in England, as now, he saith, in the least there is not : if there be no magistracy, I will conclude, there is no propriety left in this nation ; but Mr. Lilburne saith, there is no magistracy ; and if so, then no propriety.

*Lilburne.* It would be a very strange argument that you would infer ; I wish you and I were to dispute that in point of law for our lives, that to deny a magistracy legally constituted, according to the formalities of law, does not destroy propriety. For indeed, Sir, propriety is an antecedent to magistracy, and is first in being before it. But, Sir, to end the dispute, he that owns the law of England (as I do) that distinguisheth *meum* and *trum*, can never be a destroyer of propriety : I wish your practice were as consonant to propriety as my principles.

*Mr. Attorney.* Read the second Page at the Mark.

*Clerk.* 'Now, I say, considering that which is before declared, I cannot upon any terms in the world, either with safety, justice or conscience, as things stand with me at present, give my consent, but hinder, as much as I am able, all addresses from me, or any other that shall own the usurping tyrants as a parliament, especially by petition, which was a course (saith the pretended parliament solicitor against the king, in his Case Stated, page 24.) which God's people did not take with Rehoboam ; for they never petitioned him, although he was their lawful supreme magistrate, but advised him : he refusing their counsel, and hearkening to young and wicked counsellors, they cry out, To thy tents O Israel ! and made quick and short work of it.'

*Mr. Prideaux.* My lord, here are words again to make good as aforesaid, that the parliament are usurping tyrants. Read also page 28.

*Clerk.* Read on page 28, in the margin of the said book. 'And if those very things should be judged treason, as they are, and were in the earl of Strafford, I wonder what should become of all our present Juncto at Westminster, and their new thing called a Council of State ? Undoubtedly the most, if not all of them, must go to Tyburn or Towerhill, there by a halter or axe to receive their just deserts. Amen.'

*Mr. Attorney.* There is an *Amen* pronounced to us, let him have it that deserves it ; But go on. Read the 11th page of his book called, "The Apprentices Out-cry."

*Clerk* reads page 11. 'We say, considering what is before premised, we are necessitated and compelled to do the utmost we can for our own preservation, and the preservation of the land of our nativity, and never by popular petitions, &c. address ourselves to the men sitting at Westminster any more, or to take any more notice of them, than as of so many tyrants and usurpers ; and for time to come to hinder, as much and as far as our poor despised interest will extend to, all

'others whatsoever from subscribing, or presenting any more popular petitions to them ; and only now as our last paper-refuge, mightily cry out to each other, of our intolerable oppressions, in letters and remonstrances signed in the behalf, and by the appointment of all the rest, by some of the stoutest and stiffest among us, that we hope will never apostatize, but be able, through the strength of God, to lay down their very lives for the maintaining of that which they set their hands to.'

*Mr. Attorney.* Read page 2.

*Clerk* reads on page 2, 'But even our parliament, the very marrow and soul of all the people's native rights, put down, and the name and power thereof transmitted to a picked party of your forcible selecting, and such as your officers, our lords and riders, have often and frequently stiled no better than a mock-parliament, a shadow of a parliament, a seeming authority, or the like, pretending the continuance thereof, but till a new and equal representative by mutual agreement of the free people of England, could be elected ; although now for suberviency to their exaltation and kingship, they prorogue and perpetuate the same, in the name, and under colour thereof, introducing a privy council, or, as they call it, a Council of State, of superintendency and suppression to all future parliaments for ever, erecting a martial government, by blood and violence imposed upon us.'

*Mr. Attorney.* Read page 3, at the mark.

*Clerk.* Page 3. 'Trade is decayed and fled ; misery, poverty, calamity, confusion, yea, and beggary grown so sore and so extreme upon the people, as the like never was in England, under the most tyrannical of all our kings that were before these in present power, since the days of the Conqueror himself : no captivity, no bondage, no oppression like unto this ; no sorrow, and misery like unto ours, of being enslaved, undone and destroyed by our large pretended friends.'

*Mr. Attorney.* Read page 4.

*Clerk.* Page 4. 'And yet nothing but the groundless wills and humours of those aforementioned men of blood rageth and ruleth over us : and is this all the return and fruit that people are to expect from your hands ?'

*Mr. Attorney.* Take this 'Preparative to an Hue-and-Cry after sir Arthur Haslerig,' and read page 2.

*Clerk* reads on. The 'Preparative to an Hue and Cry after sir Arthur Haslerig,' at page 2, in the margin : 'That those men that now sit at Westminster, are no parliament, either upon the principles of law or reason.'

*Mr. Attorney.* Read page 3.

*Clerk.* Page 3. 'They promise to amend, and to proceed according to the form of the law, as fully appears in their last forementioned declaration, and several others ; as parti-

'cularly the present declaration of this present juncto against kingship, dated the 17th of March, 1648.'

*Mr. Attorney.* Read page 4.

*Clerk.* Page 4. 'But the said sir Arthur Haslerig, &c. more arbitrarily, and more treacherously than Strafford, having no pretence of regal, legal, or parliamentary commissions, or authority, no not so much as from the present nothing, or illegal juncto, or the present illegal thing called the Council of State, Mr. John Jordan now member.'

*Mr. Attorney.* My lord, he doth declare who he means by juncto; Mr. Jordan, a member of the present juncto, the pretended house of commons. In the third place, for the first proof of this particular, I shall produce his book, entitled, 'The Legal and Fundamental Liberties of England revived, &c.' Read page 41.

*Clerk* reads page 41. 'But, Sir, I say, no wonder, all the things foregoing rightly considered, they do own you now (as Thomas Pride hath made you) for the supreme authority of the nation; although before they would neither submit to king nor parliament, (when it was a thousand times more unquestionable, both in law and reason, than now you are) but fought against both king and parliament, their setters up, conquered them, repelled them, subdued them, and broke them both; and so pulled up by the roots all the legal and visible magistracy and authority in the nation, and thereby left none but themselves, who stand in parallel to none (as they have managed their business) but to a company of murderers, thieves and robbers, who may justly be dispossessed by the first force that are able to do it; no pretended authority that they of themselves, and by their swords can set up, having in the sight of either God or man, either in law or reason, any more just authority in them, than so many Algier pirates and robbers upon the sea have.'

*Lilburne.* You read, as I take it, a second edition; whether is that a second edition or no?

*Mr. Attorney.* No, no, it is not so in the Indictment; it is no second edition, but the first. Read page 56.

*Clerk.* Page 56. 'To which I answer; First, That that Company of Men at Westminster, that gave commission to the High Court of Justice to try and behead the king, were no more a Parliament by law, or a Representative of the People, by the rules of justice and reason, than such a company of men are a parliament, or representative of the people, that a company of armed thieves chuse and set apart to try, judge, condemn, hang, or behead any man that they please, or can prevail over by the power of the sword to bring before them by force of arms, to have their lives taken away upon pretence of justice, grounded upon rules merely flowing from their wills and swords.'

*Mr. Attorney.* Read the title-page.

*Clerk.* 'The Legal Fundamental Liberties of the people of England revived, asserted and vindicated: or an Epistle written the 8th of June, 1649, by lieut. col. John Lilburne (arbitrary and aristocratical Prisoner in the Tower of London) to Mr. Wm. Lenthall, Speaker to the Remainder of those few knights, citizens and burgesses, that col. Thomas Pride at his late Purge thought convenient to leave sitting at Westminster, (as most fit for his and his master's designs, to serve their ambitious and tyrannical ends, to destroy the good old laws, liberties, and customs of England, the badges of our freedom, as the Declaration against the king of the 17th of March, 1648, p. 23, calls them, and by force of arms to rob the people of their lives, estates and properties, and subject them to perfect vassalage and slavery, as he clearly evinceth in his present case, &c. they have done) and who (in truth no otherwise than pretendedly) stile themselves the parliament of England.'

*Mr. Attorney.* Read page 2.

*Clerk.* 'Sir, for distinction-sake, I will yet stile you Mr. Speaker, although it be but to col. Pride's juncto, or parliament sitting at Westminster (not the nation's, for they never gave him authority to issue out writs to elect or constitute a parliament for them); and a little below, in the same second page, I accused Oliver Cromwell for a wilful murderer, and desire you there to acquaint your house therewith (who then had some little hand of a parliament-stamp upon it).'

*Mr. Attorney.* Read page 28.

*Clerk.* Page 28. 'The like of which tyranny the king never did in his reign; and yet by St. Oliver's means lost his head for a tyrant. But the thing that I principally drive at here, is to declare that Oliver and his parliament, now at Westminster, (for the nation's it is not) having plucked up the house of lords by the roots.'

Page 44. 'So that if it be Treason to call this a Mock-Parliament, yea, and to say, &c. And if this be true, (for true it is), then there is neither legal justice, nor justice of peace in England.'

*Mr. Attorney.* Read page 37.

*Clerk.* Page 37. 'For if ever they had intended an Agreement, why do they let their own lie dormant in the pretended parliament ever since they presented it? seeing it is obvious to every knowing eye, that from the day they presented it, to this hour, they have had as much power over their own parliament, now sitting, as any school-master in England had over his boys.'

*Clerk.* Page 45. 'For your interest and the king's, both being interests of trust, as your declarations do plentifully and plainly declare; but especially your present Juncto's late declaration against the late beheaded king, and kingly government.'

*Mr. Attorney.* Read page 58.

*Clerk.* Page 58. 'And let the present

'generation of swaying men, that under pretence of good, kindness, and friendship; have destroyed and trod under foot all the liberties of the nation, and will not let us have a new parliament; but set up by the sword their own insufferable, insupportable, tyrannical tyranny.'

*Lilburne.* I pray, Sir, are all these quotations in the Indictment *verbatim*? I do not remember that I heard them there.

*Mr. Attorney.* No, we do not offer any Book but what is charged in the Indictment: For we do say, That he published those things among other clauses and things in those books. So that we bring in no book that is not contained in the Indictment. Read p. 64.

*Clerk.* Page 64. 'That so they might rule, direct, and counsel their Mock-Parliament.'

*Mr. Attorney.* Read page 68.

*Clerk.* Page 68. 'That the High Court of Justice was altogether unlawful, in case those that had set it up had been an unquestionable representative of the people, or a legal parliament: neither of which they are not in the least; but, as they have managed their business in opposing all their primitive declared ends, are a pack of traitorous, self-seeking, tyrannical men, usurpers of the name and power of parliament.'

*Mr. Attorney.* Read page 72.

*Clerk.* Page 72. 'Then with much more confidence, say I, This that now sits is no parliament; and so by consequence the High Court of Justice no court of justice at all.'

*Mr. Attorney.* My lord, that which we shall offer you next, is the "Salva Libertate," which the Lieutenant of the Tower had from Mr. Lilburne himself. Read at the mark.

*Clerk.* "A Salva Libertate:—" Although I then told you I judged a paper warrant, (although in words never so formal) coming from any pretended power or authority in England, now visible, to be altogether illegal; because the intruding general Fairfax and his forces had broke and annihilated all the formal and legal magistracy of England, yea the very parliament itself; and by his will and sword (absolute conqueror like) had most tyrannically erected, and set up, and imposed upon the free people of this nation a Juncto or Mock-Power, sitting at Westminster, whom he and his associates call a Parliament; who, like so many armed thieves and robbers upon the highway, assume a power, by their own wills, most traitorously to do what they like, yea, and to fill the land with their mock and pretended magistrates, amongst the number of which is the pretended Attorney-General; in perfect opposition of whom, to the utmost of my might, power, and strength, I am resolved by God's gracious assistance, to spend my blood, and all that in this world is dear unto me, supposing him not really and substantially worthy the name of an English freeman, that in some measure, in this particular, is not of my mind.'

*Mr. Attorney.* My lord, in the case of this charge, what Mr. Lilburne is pleased to say concerning me, I shall say no more but only this; I shall not do so by him; I shall not spend my blood against him. You see what he saith, That the present government is tyrannical, usurped, and unlawful; that the commons of England in parliament assembled are not the supreme authority, but a juncto, a mock power, a mock parliament, a company of traitors, that rule merely by the dictates of their own will. I could alledge more of his books unto you, which have words in them very notorious, and very public. He doth in express words say, That the government is arbitrary, tyrannical, and a new-erected, ruining, enslaving, robbing government: to stile them tyrants, usurpers, traitors, parallel to none but murderers, robbers, thieves: No parliament at all, but Thomas Pride's Juncto, and school-boys, destroyers of the laws and liberties of the nation, the present Juncto (chimeras, fooleries, and the like): All these expressions, and many more, which I am sorry I have occasion to repeat to you; that so much dirt should be thrown into the face of any magistrates of England: My lords, these are now the best which do rule. My lords, I hope you and the gentlemen of the jury will take notice of it, as to be very clear, pregnant, evident proof, that Mr. Lilburne hath thus published, and thus said. And besides this, you see what he does go to. He denies magistracy (a). So that now we are all alike, a chaos, a confusion; and this he hath brought us to, or would have endeavoured it. My lords, I shall not aggravate; and if I did say no more, it were enough. But I come to the second general head of the charge; which is, That he hath plotted and contrived to levy or raise forces to subvert and overthrow the present established government, in the way of a free state or commonwealth. My lords, if I should say nothing more to the jury, this that hath been already read is evident proof of that: For certainly those that shall say that the governors be tyrants, that the parliament is tyrannical, that they are men of blood, destroyers of laws and liberties; this cannot be of any other use but to raise force against them, for subverting and destroying of them, as he himself saith, as so many weasels or polecats (b); especially if you consider to whom these words were declared, to the army

(a) "That's false: he doth no such thing; but at most saith, The army hath destroyed all the legal magistracy of the nation; and they are the men that thereby are the real Levellers and Rooters."—Orig. Ed.

(b) "In calling tyrants weasels and polecats, he hath said no more but what he hath learned out of St. John's own Argument of Law against the earl of Strafford: at which you have no cause to be angry, because they are the words of one of your own brother lawyers."—Note to Original Edition. See what Lilburne refers to, *ante*, vol. 3, pp. 1509, 1510.

in general, especially to the general's regiment of horse, that helped to plunder and destroy Mr. Lilburne's true friends, defeated at Burford; and some of which were most justly, as traitors, executed.

My lords, If I would say nothing more to the Jury but this, there is full and pregnant proof already: But yet, my lord, further to shew the malice of Mr. Lilburne's heart, and that he did intend to raise force, to incite and invite them to help him to subvert and destroy the parliament: And for the proof of this, read the fifth page of his "Impeachment of High-Treason against Oliver Cromwell."

Clerk reads page 5. 'But, my true friends, I shall here take upon me the boldness (in regard of the great distractions of the present times) to give a little further advice to you, from whose company or society (or from some of them) hath begun and issued out the most transcendent, clear, rational, and just things for the people's liberties and freedoms, that I have seen or read in this nation, as your notable Petition of May 20, 1647, burnt by the hands of the common hangman, recorded in my book, called, "Rash Oaths unwarrantable," page 29, 30, 31, 32, 33, 34, 35, with divers other Petitions of that nature; and the Petition of the 19th of Jan. 1647, recorded in the following discourse, page 45, 46, 47, 48, &c. and the masculine Petition of the 11th of Sept. 1648, so much owned by Petitions out of several counties, yea, and by the officers of the army's large Remonstrance, from St. Albans, of the 16th of November, 1648, page 67, 68, 69. The substance of all which, I conceive, is contained in the printed sheet of paper signed by my fellow prisoners, Mr. William Walwyn, Mr. Thomas Prince, and Mr. Richard Overton, and myself, dated the 1st of May, 1649, and intitled, "An Agreement of the Free People of England," &c. The principles of which I hope and desire you will make the final centre and unwavering standard of all your desires, hazards, and endeavours, as to the future settlement of the peace and government of this distracted, wasted, and divided nation; the firm establishing of the principles therein contained, being that only which will really and in good earnest marry and knit that interest, whatever it be, that dwells upon them, unto the distressed and oppressed commons or people of this nation. Yea, the settling of which principles is, that that will thereby make it evident and apparent unto all understanding people in the world, that the real and hearty good and welfare of this nation hath cordially, and in good earnest, been that that their souls have hunted for, and thirsted after, in all the late bloody civil wars and contests; all the contests of the king's party, for his will and prerogative, being merely selfish, and so none of the people's interest; and the contest of the Presbyterians, for their make-bate, dividing, hypocritical Covenant, no better in the least; and the present contest of the present dissembling

interest of Independents, for the people's liberties in general (read the following discourse, page 27, 28, 29.); merely no more but self in the highest, and to set up the false saint, and most desperate apostate, murderer, and traitor, Oliver Cromwell, by a pretended election of his mercenary soldiers, under the false name of the godly interest, to be king of England, &c. (that being now too apparently all the intended liberties of the people that ever he sought for in his life); that so he might rule and govern them by his will and pleasure, and so destroy and eviscerate their lives and properties to his lusts: Which is the highest treason that ever was committed or acted in this nation in any sense or kind; either, 1. In the eye of the law: or, 2. In the eye of the ancient (but yet too much arbitrary) proceedings of parliament: or, 3. In the eye of their own late declared principles of reason (by pretence of which, and by no rules of law in the least, they took away the late king's head): Which, if there were any law or justice in England to be had, or any magistrates left to execute it (as in the least there is not), &c.

Mr. Attorney. Read page 7.

Clerk, page 7. 'But the principles of the foresaid Agreement being so detestable and abominable to the present ruling men, as that which they know will put a full end to their tyranny and usurpation, and really ease and free the people from oppression and bondage, that it is something dangerous to those that go about the promotion of it; yet I shall advise and exhort you vigorously to lay all fear aside, and to set on foot the promotion of it, in the same method we took for the promotion of the foresaid Petition of January 19, 1649, laid down in the following discourse, page 23, 24, 25, and write to your friends in every county of England, to chuse out from among themselves, and send up some agents to you (two at least from each county, with money in their pockets to bear their charges), to consider with your called and chosen agents of some effectual course, speedily to be taken, for the settling the principles thereof (as that only which in an earthly government can make you happy, or at least to know one another's minds in owning and approving the principles thereof): That so it may become to you and your friends your centre, standard, and banner, to flock together to, in the time of these foreign invasions and domestic insurrections, that are like speedily to bring misery enough upon this poor and distressed nation; and unanimously resolve and engage one to another, neither to side with, or fight for the chimeras, fouleries, and pride of the present men in power, nor for the prince's will, or any other base interest whatsoever (the which if you should fight for, it would be an absolute murdering of your brethren and countrymen, you know not wherefore), unless he or they will come up to those just, righteous, and equitable principles therein contained, and give rational and good security for the constant adhering thereunto.

‘And upon such terms, I do not see but you may justifiably, before God or man, join with the Prince himself; yea, I am sure a thousand times more justly than the present ruling men (upon a large and serious debate) joined with Owen Roe O’Neale, the grand bloody rebel in Ireland: who, if we must have a king, I, for my part, had rather have the Prince than any man in the world, because of his large pretence of right; which, if he come not in by conquest, by the hand of foreigners (the bare attempting of which may apparently hazard him the loss of all at once, by gluing together the now divided people, to join as one man against him) but by the hands of Englishmen, by contract upon the principles aforesaid, which is easy to be done; the people will easily see, that presently thereupon they will enjoy this transcendent benefit, he being at peace with all foreign nations, and having no regal pretended competitor, viz. the immediate disbanding all armies and garrisons, saving the Old Cinque Ports; and so those three grand plagues of the people will cease, viz. Free Quarter, Taxations, and Excise: by means of which the people may once again really say, they enjoy something they can in good earnest call their own. Whereas, for the present army to set up the false pretended Saint Oliver, or any other, as their elected king, there will be nothing thereby, from the beginning of the chapter to the end thereof, but wars and the cutting of throats year after year, yea, and the absolute keeping up of a perpetual and everlasting army, under which the people are absolute and perfect slaves and vassals, as by woful experience they now see they perfectly are: which slavery and absolute bondage is daily like to increase under the present tyrannical and arbitrary new-erected robbing government.’

Mr. Attorney. He hath blown the trumpet, for all that will come in: he hath set up his centre; he would have it to be a standard for all his friends to flock to him. And to make them the more quick in betaking them to their arms, he hath falsely and maliciously there said, That the Parliament had joined with Owen Roe O’Neale; which I can assure all that hear me this day, the Parliament always detested, abominated, disavowed, and declared against, and never had any thoughts that way. My lord, the false imputations of his laid upon the Parliament, are almost numberless. But, in the second place, I come to that pretty bauble, that’s of his own making, the Agreement of the People, dated at the Tower, the 1st of May, 1649, and shall desire your lordships to judge whether this Agreement of the People, which he made, and his friends then in the Tower, and intitled, “The Agreement of the People,” assigned by them, for they called it “An Agreement of the free People of England;” strikes not at the very root of all government.

Lilburne. Pray, Sir, look whether it be licensed, or no, according to the law of the nation; and if it be licensed by public autho-

rity, how comes it to be treason? That’s very strange!

Mr. Attorney. It is so.

Lilburne. Pray, Sir, go and question the licenser, then.

Mr. Attorney. We must question the author; the licenser will not excuse it. Read page 2.

Clerk reads page 2. ‘This Agreement being the ultimate end and full scope of our desires and intentions concerning the government of this nation.’ And a little below: ‘After the long and tedious prosecution of a most unnatural, cruel, home-bred war, occasioned by divisions and distempers amongst ourselves; and those distempers arising from the uncertainty of our government, and the exercise of an unlimited or arbitrary power by such as have been trusted with supreme and subordinate authority, whereby multitudes of grievances and intolerable oppressions have been brought upon us: and finding, after eight years experience and expectation, all endeavours hitherto used, or remedies hitherto applied, to have increased, rather than diminished our distractions; and that if not speedily prevented, our falling again into factions and divisions will not only deprive us of the benefit of all those wonderful victories God hath vouchsafed against such as sought our bondage, but expose us first to poverty and misery, and then to be destroyed by foreign enemies.’

Mr. Attorney. Read page 3.

Clerk. Page 3. ‘Agree to ascertain our government, to abolish all arbitrary power, and set bounds and limits both to our supreme and all subordinate authority, and remove all known grievances; and accordingly do declare and publish to all the world, that we are agreed as followeth’ Page ibid. ‘That the supreme authority of England, and the territories therewith incorporate, shall be and reside henceforward in a representative of the people, consisting of 400 persons, but no more.’

Mr. Attorney. The manner of the choice of whom, &c. they leave to this parliament. Read a little below.

Clerk. ‘All things concerning the distribution of the said 400 members proportionable to the respective parts of the nation, the several places for election, the manner of giving and taking of voices, with all circumstances of like nature, tending to the completing and equal proceedings in elections, as also their salary, is referred to be settled by this present parliament, in such sort as the next representative may be in a certain capacity to meet with safety at the time herein expressed; and such circumstances to be made more perfect by future representatives.—We agree that this present parliament shall end the first Wednesday in August next, 1649, thenceforward to be of no power or authority; and in the mean time shall order and direct the election of a new and equal representative, according

to the intent of this our Agreement; and so as the next representative may meet and sit in power and authority, as an effectual representative, upon the day following, namely, the first Thursday of the same August, 1649.

Page *ibid.* We agree, if the present Parliament shall omit to order such election or meeting of a new representative, or shall by any means be hindered from performance of that trust, that in such case we shall for the next representative proceed in electing thereof in those places, and according to that manner and number formerly accustomed in the choice of knights and burgesses; observing only the exceptions of such persons from being electors or elected, as are mentioned before in the first, third, and fourth heads of this Agreement: it being most unreasonable, that we should either be kept from new frequent and successive representatives, or that the supreme authority should fall into the hands of such as have manifested disaffection to our common freedom, and endeavoured the bondage of the nation. And for preserving the supreme authority from falling into the hands of any whom the people have not or shall not chuse, we are resolved and agreed, God willing, that a new representative shall meet upon the first Thursday in August next aforesaid: the ordering and disposing of themselves, as to the choice of a Speaker, and the like circumstances, is hereby left to their discretion; but are in the extent and exercise of power, to follow the direction and rules of this Agreement: and are hereby authorized and required, according to their best judgments, to set rules for future equal distribution and election of members, as is herein intended and enjoined to be done, by the present parliament.

*Mr. Attorney.* Read page 8.

*Clerk.* Page 8. And all laws made, or that shall be made, contrary to any part of this Agreement, are hereby made null and void.

*Mr. Attorney.* My Lords, hereby by this "Agreement of the People," that Mr. Lilburne hath published to the world, in which, my lord, he hath designed how many the Supreme Authority shall consist of, the time when the parliament shall dissolve, as also the time when his own parliament shall meet; this parliament to be dissolved the first Wednesday in August 1649, all laws contrary to this to be null and void: and in it you shall find some expressions of treason in the height, that whosoever shall do contrary to it, shall be most severely punished. In the next Book before this, it is desired by him, that this "Agreement of the People" may be the centre, the banner, and standard of all his friends, and that they go on vigorously with it; which is, my lord, to dissolve this parliament, and to put on this new one of Mr. Lilburne's appointing. This, we conceive, which is of Mr. Lilburne's appointing, would, if effected, be an absolute subversion of this in being; and this is High Treason. My lord, we shall go on with more yet, and that is with his

Outcry. My lord, if you please to see the title, and see to whom it is directed, what was intended to be done with it: it is intitled, "An Outcry of the Young Men and Apprentices of London, directed Aug. 29, 1649, in an Epistle to the private soldiery of the army, especially all those that signed the 'Solemn Engagement' at Newmarket-heath, the 5th of June, 1647, but more especially to the private soldiers of the general's regiment of horse, that helped to plunder and destroy the honest and true-hearted Englishmen, traitorously defeated at Burford, the 15th of May, 1649." A good encouragement! they were traitorously defeated at Burford; but we are rebels and traitors, and our army murderers and butchers, for giving some of those declared traitors their due deserts. But that you may see his tendency by this Book, read page 11.

*Clerk.* Page 11. We say, considering what is before premised, we are necessitated and compelled to do the utmost we can for our own preservation, and for the preservation of the land of our nativity, and never, by popular petitions, address ourselves to the men sitting at Westminster any more, or to take any more notice of them than of so many tyrants and usurpers, and for time to come to hinder, as much and as far as our poor despised interest will extend to all others whatsoever from subscribing or presenting any more popular petitions to them. And only now, as our last paper-refuge, mightily cry out to each other of our intolerable oppressions, in letters and remonstrances, signed in the behalf, and by the appointment of all the rest, by some of the stoutest and stiffest amongst us, that we hope will never apostatize, but be able through the strength of God to lay down their lives for the maintaining of that which they set their hands to. You our fellow-countrymen, the private soldiers of the army, alone being the instrumental authors of your own slavery and ours; therefore, as there is any bowels of men in you, any love to your native country, kindred, friends or relations, any spark of conscience in you, any hopes of glory or immortality in you, or any pity, mercy or compassion, to an enslaved, undone, perishing, and dying people! O help! help! save and redeem us from total vassalage and slavery, and be no more like brute-beasts, to fight against us or our friends, your loving and dear brethren after the flesh, to your own vassalage as well as ours! And as an assured pledge of your future cordialness to us, (and the true and real liberties of the land of your nativity) we beseech and beg of you (but especially those amongst you that subscribed the solemn Engagement at Newmarket-heath, the 5th of June, 1647,) speedily to chuse out amongst yourselves two of the ablest and constantest faithful men amongst you in each troop and company, now at last, by corresponding each with other, and with your honest friends in the nation, to consider of some effectual course, beyond all pre-

'tences and cheats, to accomplish the real end of all your engagements and fightings, viz. the settling of the liberties and freedom of the people; which can never permanently be done, but upon the sure foundation of a popular agreement who (viz. the people) in justice, gratitude, and common equity, cannot chuse but voluntarily and largely make better provision for your future subsistence, by the payment of your arrears, than ever your officers or this pretended parliament intends, or you can rationally expect from them: witness their cutting off three parts of your arrears in four, for free-quarter; and then necessitating abundance of your fellow-soldiers (now cashiered, &c.) to sell their debentures at 2s. 6d., 3s., and at most 4s. per lib.'

Mr. Attorney. See, my lord, here we are styled tyrants, usurpers, introducing government-oppressions of the people; and Mr. Lilburne is resolved with his friends to join together, and to lay down their very lives for this. This, I think, is a trumpet blown aloud for all the discontented people in the nation to flock together, to root up and destroy this parliament, and so the present government. But read also the same book, pag. 9.

Clerk. Page 9. 'For the effectual promotion of which said Agreement, we are necessarily compelled to resolve in close union to join ourselves, our commissioners (chosen for that end) in council, with our foresaid Burford friends, or their commissioners; and to resolve to run all hazards to methodize all our honest fellow-prentices, in all the wards of London, and the out-parishes, to chuse out their agents to join with us or ours, to write exhortative epistles to all the honest-hearted freemen of England, in all the particular counties thereof, to erect several councils amongst themselves; out of which we shall desire, and exhort them to chuse agents or commissioners, impowered and intrusted by them, speedily to meet us and the agents of all our (and the Agreement of the People) adherents at London, resolvedly to consider of a speedy and effectual method and way how to promote the election of a new and equal representative, or parliament, by the agreement of the free people: Seeing those men that now sit at Westminster, and pretendedly stile themselves the parliament of England, and who are as they say (although most falsely) in the Declaration for a free state, dated March 17, 1648, page 37. intrusted and authorized by the consent of all the people of England, whose representatives they are; make it their chiefest and principallest work, continually to part and share amongst themselves all the great, rich, and profitable places of the nation; as also the nation's public treasure and lands; and will not ease our intolerable oppressions, no not so much as of late receive our popular petitions, having upon Thursday last, Aug. 23, 1649, rejected that most excellent of petitions ready at their door to be presented to them

'by divers honest men, our true-hearted neighbours of Surrey, the true copy of which, for the worth of it, although it be at large already printed in "Friday Occurrences," and the "Tuesday-Moderate," we desire here to insert.'

Mr. Attorney. My lord, this is a loud one! Whom does he join us withal, but only with those very men that justly suffered death, many of them, for it? My lord, now it is resolved that these men shall be closely joined with them; and what to do? Still to promote The Agreement of the People, that which Mr. Lilburne hath hatched, and that must be the baby that those declared open traitors and rebels, that Mr. Lilburne will join with, must nourish up. My lord, we shall go on further to shew, what Mr. Lilburne drives at; which is not much differing from us, for he would have a free state: but, my lord, this that is now in being, it doth not go in Mr. Lilburne's way, and therefore it must be overgrown by force and arms, that so way may be made for his new commonwealth. (a) We shall go further on, my lord, and in the next place quote his book, intitled, "The Legal Fundamental Liberties of the People of England revived, asserted, and vindicated, &c." Read page 57.

Clerk reads page 57. 'And the present setters up of this tyrannical new commonwealth, considering their many oaths, covenants, promises, declarations, and remonstrances to the contrary, (with the highest promises and pretences of good for the people and their declared liberties, that ever was made by men) are the most perjured, perfidious, false, faith and trust-breakers, and tyrants, that ever lived in the world; and ought by all rational and honest men to be the most detested and abhorred of all men that ever breathed, by how much the more under pretence of friendship and brotherly-kindness they have done all the mischief they have done, in destroying our laws and liberties.'

Mr. Attorney. My lord, and you gentlemen of the jury, you see Mr. Lilburne hath been pleased very often to give the name of tyrants to the parliament: I would give no other instance, nor shew no other example but Mr. Lilburne himself, to disprove himself; and with much confidence affirm it, that never state had before, (neither king nor state) since the foundations of it; so much enmity, nor have endured with so much patience any man whatsoever, as they have done Mr. Lilburne: who notwithstanding all his traitorous provocations and traitorous designs undertaken against them, is yet alive at this day, and now hath fair play to plead for his

(a) "And yet a few days before his Trial, several principal leading members of the House and Council of State told his wife, and several others of his friends, that Mr. Lilburne was turned Cavalier, and had joined with the Prince, and they had several letters under his own hand to prove it."—Orig. Edit.

life. I would take him for his own confurter, and see by all that has been done by him, and see if he could make good his actings, and make good the parliament's dealing with him therefore, can be demonstrated by him to prove them tyrants. My lord, I can hardly forbear, to see and hear his dangerous and desperate expressions, to invite all people for to take up arms against the parliament, to cut their throats like pole-cats and weasels. My lords, here to stile them the most perfidious, perjured, false, faith and trust-breakers and tyrants that ever lived in the world; and to be the most abhorred and detested of all the people, above all men that ever breathed: O insufferable, and the highest of treasons.

*Lilburne.* Sir, all the wit of all the lawyers in England could never bring it within the compass of High-Treason, by the old and just laws of this nation, that abhors to oppress men contrary to law; and then if they seem but to cry out of their oppressions, to make them traitors for words.

*Mr. Attorney.* I am confident the least lawyer in England would have brought this within the statute of Treason of the 25 Ed. 3. chap. 2. My lords, you shall see there is none escaped; the parliament with him are tyrants, traitors, and usurpers; and therefore he stirs up the people to destroy them. But in the third place, you shall see what titles he gives to my lord general Fairfax, and his chief officers; that, my lord, he that reads the books, and doth not know the persons, he would think that they were monsters, and not men, although they are so famous and glorious, that all the world hath rung of them to their praise. But, saith he, never was there more glorious declarations made by men than by them, and yet never performed any of them. Nay, he doth not only call them also covenant and engagement-breakers, but he calls the lord general, tyrant, murderer, and what not; and the officers, perfidious officers. My lords, what I observed in the last clause of the act, is, That whosoever goes about to draw the soldiers from their obedience to their superior officers, or from their obedience to the present government, that is High-Treason: and thus likewise we shall find him guilty of in his "Legal Fundamental Liberties of England asserted and vindicated;" it is in the first side of the Epistle that in the first place I pitch upon: read it.

*Clerk.* Page 1 of the Epistle. 'I positively accuse Mr. Oliver Cromwell for a wilful murderer, (and desire you to acquaint your house therewith) for murdering Mr. Richard Arnold near Ware.'

*Mr. Attorney.* Which man, my lord, was condemned for a mutiner by a council of war, where the Lord Lieutenant of Ireland was but one member; and the Parliament gave him and the rest of that council thanks, for shooting that mutinous soldier to death: and yet Mr. Lilburne calls him murderer therefore, and this is laid to my Lord Lieutenant's charge for his part.

*Lilburne.* Doth not the Petition of Right absolutely condemn all such acts in time of peace, when the courts of justice are open? And the Judgment of the earl of Strafford doth abundantly condemn it, who lost his life for a traitor, for doing the very same in kind and likeness, at that time, when he in the eye of the law was as legal a general, as the general was that condemned that man.

*Mr. Attorney.* My lords—

*Lilburne.* I pray, Sir, hear me out, and sure I am, the declarations of all the powers extant in England ever since, have been to maintain the Petition of Right inviolably; yea, even those that are now in present power: and if the Petition of Right be true, to shoot soldiers, as Arnold was, is absolute murder. Nay, further, if the judgment of the parliament upon the earl of Strafford for such an act be legal, then all those that had a hand in shooting that soldier are traitors, and ought to die for it, as well as Strafford.

*Clerk* reads on the second side of the Epistle. 'Of all which crimes and charges, and all your others against the king, contained in your foresaid declaration, I know not three of them but Cromwell and his confederates, in your pretended house and army, are as guilty of the like in kind, though under a new name and notion, as the king was of the fore-mentioned, if not more guilty.'

*Mr. Attorney.* Read page 35.

*Clerk.* Page 35. 'But alas, poor fools! we were merely cheated and cozened, it being the principal unhappiness to some of us, as to the flesh, to have our eyes wide open, to see things long before most honest men come to have their eyes open. And this is that which turns to our smart and reproach, and that which we Commissioners feared at the first, viz. That no tie, promises, nor engagements were strong enough to the grand jugglers and leaders of the army, was now made clearly manifest; for when it came to the council, there came the general, Cromwell, and the whole gang of creature-colonels, and other officers, and spent many days in taking it all in pieces, and there Irtton shewed himself an absolute king, if not an emperor; against whose will no man must dispute. And then Shuttlecock, Iloe their scout, Okey, and major Baiton (where sir Hardress Waller our president), began in their open counsel to quarrel with us, by giving some of us base and unworthy language; which procured them from me a sharp retortment of their own baseness and unworthiness into their teeth, and a challenge from myself into the field. Besides, seeing they were like to fight with us in the room in their own garrison, which when sir Hardress Waller in my ear reproved me for it, I justified it, and gave it him again, for suffering us to be so affronted. And within a little time after, I took my leave of them for a pack of dissembling, juggling knaves, amongst whom in consultation ever thereafter I should scorn to come (as I told

‘some of them); for there was neither faith, truth, nor common honesty among them. And so away I went to those that chose and entrusted me, and gave publicly and effectually (at a set meeting appointed on purpose) to dyers of them, an exact account how they had dealt with us, and cozened and deceived us; and so absolutely discharged myself from meddling or making any more with so perfidious a generation of men, as the Great Ones of the army were; but especially the cunningest of Machiavelians, commissary Henry Ireton.’

Mr. Attorney. Read page 37, at the mark.

Clerk. Page 37. ‘Which the general and his council knew well enough: and I dare safely say it upon my conscience, that an Agreement of the People, upon foundations of just freedom, gone through with, is a thing the general, and the chiefest of his council, as much hate, as they do honesty, justice, and righteousness (which they long since abandoned); against which, in their own spirits, they are absolutely resolved, I do verily believe, to spend their heart-blood, and not to leave a man breathing in English air, (if possibly they can) that thoroughly and resolutely prosecutes it; a new and just parliament being more dreadful to them, than the great day of judgment, so much spoken of in Scripture. And although they have behended the king, yet I am confidently persuaded, their enmity is such at the people’s liberties, that they would sooner run the hazard of setting the prince in, to reign in his father’s stead, than further really a just Agreement, or endeavour a new Parliament rightly constituted.’

Mr. Attorney. Read page 38.

Clerk. Page 38. ‘Whenas, alas! it is as visible as the sun when it shineth in its glory and splendor, that Korah, Dathan, and Abiram, of old, were never such rebels against authority, as the general and his council are; nor the Anabaptists at Munster, with John of Leyden, and Buperdullion, were never more contemners of authority; nor Jack Straw, nor Wat Tyler; nor all those famous men, mentioned with a black pen in our histories, and called rebels and traitors, can never be put in any scale of equal balance, for all manner of rebellions and treasons against all sorts and kinds of magistracy, with the general and his council.’

Mr. Attorney. See, my lord, and you gentlemen of the jury, you see Mr. Lilburne gives the general and his officers as bad titles, as he can give the worst of rebels and traitors, or the worst of men. But we go on to his “Outcry;” read the title of it.

Clerk. “An Outcry of the Young-men and Apprentices of London,” page 8. where it is thus: ‘Sure all sense and compunction of conscience is not totally departed from you.’

Mr. Attorney. If it please you, my lord, because the jury may observe it, the book is directed to the soldiers of the army, and that is an “Outcry, &c.” Now read page 8.

Clerk. Page 8. ‘Sure all sense and compunction of conscience is not totally departed from you: hear us therefore, in the yearning bowels of love and kindness, we entreat and beseech you, with patience, and do not abuse us for complaining and crying out; for the knife hath been very long at the throats of our liberties and freedoms, and our burdens are too great and too many for us; we are not able to bear them, and contain ourselves; our oppressions are even ready to make us despair, or forthwith to fly to the prime laws of nature, viz. the next violent remedy at hand, light where it will, or upon whom it will. They are become as devouring fire to our bones, ready to burn us up, rendering us desperate and careless of our lives, prizing those that are already dead above those that are yet living, who are rid of that pain and torment that we do and must endure, by sensibly seeing and beholding not only the dying; but the daily burial of our native liberties and freedoms; that we care not what becomes of us, seeing that we are put into that original state, or chaos of confusion, wherein lust is become a law, envy and malice are become laws, and the strongest sword rules and governs all by will and pleasure; all our ancient boundaries and landmarks are pulled up by the roots, and all the ties and bonds of human society in our English horizon totally destroyed and extirpated. Alas, for pity! we had rather die, than live in this life of languishing death, in which our masters possess nothing (to buy themselves or us bread, to keep us alive) that they can call their own. Therefore it is no boot for us to serve out our times, and continue at our drudging trades, while these oppressions, cruelties, and inhumanities are upon us, and the rest of the people; exposing thereby not only the nation to domestic broils, wars and bloodsheds, (wherein we are sure our bodies must be the principal butts) but to foreign invasions, by France, Spain, Denmark, Swedeland, &c. as was well observed by our endeared and faithful friends; of the forementioned late treacherously defeated party at Barford, in their book of the 30th of August, 1649. entitled “The Levellers vindicated, or, the Case of their twelve Troops truly stated,” pages 11, 12, which we cannot but seriously recommend (with them) to your serious perusal and judgment; and desire to know of you (but especially the private soldiers of the general’s regiment of horse, which we understand had a hand in seizing upon and plundering our true friends at Barford), whether you do own the abominable and treacherous dealings of your general and lieutenant-general Cromwell, and their perfidious officers with them, or no, that so we may not condemn the innocent with the guilty, &c.’

Mr. Attorney. Read page 11.

Clerk. Page 11. ‘You our fellow-countrymen (the private soldiers of the army) alone, being the instrumental authors of your own slavery and ours; therefore as there is

'any bowels of men in you, any love to your native country, kindred, friends, or relations, any sparks of conscience in you, any hopes of glory or immortality in you, or any pity, mercy or compassion to an enslaved, undone, dying, perishing people: O help, help, save and redeem us from total vassalage and slavery, and be no more like brute beasts, to fight against us or our friends, &c.—And as an assured pledge of your future cordialness to us, (and the true and real liberties of the land of your nativity) we beseech and beg of you, (but especially those amongst you that subscribed the solemn engagement at Newmarket, the 5th of June 1647,) speedily to chuse out from amongst yourselves two of the ablest and constantest faithful men amongst you, in each troop and company, now at last (by corresponding each with other, and with your honest friends in the nation) to consider of some effectual course (beyond all pretences and obtests) to accomplish the real end of all your engagements and fightings, viz. the settling the liberties and freedoms of the people; which can never be permanently done, but upon the sure foundation of a popular agreement: who (viz. the people) in justice, gratitude, and common equity, cannot chuse but voluntarily and largely make better provision for your future subsistence, than ever your officers, or this pretended parliament intends, &c.'

Mr. Attorney. Read the Title of his "Impeachment."

Clerk. "An Impeachment of High Treason against Oliver Cromwell, &c."

Mr. Attorney. Read page 2.

Clerk. Page 2. 'But I shall rather desire and advise you, by letter, like yourselves to address yourselves to the lord Fairfax, by the sword of whom and his soldiers I am now in prison for my honesty and innocency, and nothing else, and demand my liberty of him. If he refuse, print it, and do as God and reason shall direct you; for it was his and his soldiers force, that fetched me out of my bed the 28th of March 1649, without all shadow of law or justice, and against the tenour of all their own declarations, the particular pages of which you may read in the following letter to Mr. Holland, page 5, and by force of arms carried me to Whitehall, and then to Derby-house, before a company of men that in law had no more power to commit my body to prison, than so many thieves and robbers upon Shuters-Hill have: who by the rules of their own wills (as in the second edition of the Picture of them I have fully declared) sent me by force of arms to the Tower, for all my short eternity in this world.—But I intreat you seriously to consider, that I cannot advise you to make address to him as the general of the nation's forces; for he is no such thing, but is merely a great tyrant, standing by the power of his own will, and a strong sword, borne by his vassals, slaves, and creatures; having no commission to be

general, either from law, the parliament, or from the prime laws of nature and reason.'

Mr. Attorney. Read "An Outcry of the Young Men and Apprentices," page 3.

Clerk. Page 3. 'Your heart seems to us as obdurate as the flinty rock; as savage and inhuman, as if the flesh and blood, the bones and marrow of the people were become your meat.'

Mr. Attorney. Stay, Mr. Broughton: the Jury will take notice, that this is directed to the soldiers of the General's regiment; this speaks to them.

Clerk reads on. Directed Aug. 29, 1649, in an "Epistle to the private Soldiers of the Army, especially all those that signed the solemn Engagement at Newmarket-Heath, the fifth of June, 1649, but more especially to the private soldiers of the general's regiment of horse."

Mr. Attorney. Now read page 3.

Clerk. page 3. 'Your hearts seem to us as obdurate as the flinty rock; as savage and inhuman, as if the flesh and blood, the bones and marrow of the people were become your meat, as already it is in effect; and instead of encouragement and support to our true friends and real believers, (at least in faithful desire and endeavour) as shall stand in the gap betwixt our destroyers and us, all ways and means are used to impoverish, destroy, and suppress them; and in them to break and vassalage the spirits of all the English, which in all ages have had the prebemiencies of other nations, that there may not be so much of gallantry or courage left amongst the people, that one amongst them shall dare to assert or maintain their freedom.' And a little below, 'If any do but murmur and complain, presently their houses, as with furies, are beset with armed mercenary janizaries, guards, and centinels set upon their doors and passages.'

Mr. Attorney. My lord, and you gentlemen of the jury, you hear what stuff this of Mr. Lilburne's is; yea, such stuff as that it would make any man loath to hear it. The last clause of the act is, 'If any person not being an officer, soldier, or member of the army, shall plot, contrive or endeavour to stir up any mutinies in the army, or to withdraw any officers or soldiers from their obedience to their superior officers, or to the present government; it is high treason.' You have here the several books read to you, and the calumination laid upon the chiefest of them, to stir the rest up to mutinies against them; but they are very well known, and therefore nothing that Mr. Lilburne can say will stick upon them, to their prejudice. But, my lord, you see here, and you of the jury, how he appeals from the officers to the soldiers, interrogates to know what they could do, and whether they will acknowledge they will own them, and not fight against them, and what aid and assistance they will give to him and his friends against their own general, and the rest

of their superior officers. You see also what he calls that noble general, that all the world doth honour, and his fame rings through the world; and yet he calls him a grand tyrant, standing by the power of his own will, and a strong sword, a destroyer of the parliament, of the laws and liberties of England. You see what he calls the common soldiers; furies and mercenary janizaries, which none but Turks have. You have heard the several charges proved unto you; for my part, I think it as clear as noon-day. We have not raised any advantage upon any slipping words that have slipt from him, which we might have done; and I could have urged some more witnesses, to have proved his books published by him to public view, though when he comes in the face of the public court of justice he will not own them, which shews his design to be the more dangerous. He will write, print, publish, bespatter, and reproach; yea, and raise tumults and rebellion in a clandestine way: but if we chance to question him therefore, he will not own it; you see we have been fain to fetch it out of the fire; and yet this is one of England's and its liberties valiant champions.

*Lilburne.* You have done no more to me, than the Scribes and Pharisees did to Jesus Christ; and in my dealing with you, I have but walked in the steps of my Lord and Master Jesus Christ and his apostles. For I am sure of it, Jesus Christ, in his pilgrimage on earth, freely, openly, and publicly taught and declared himself to be the Son of God, the Messiah or Saviour of the world that was prophesied of; and yet when he came amongst the Scribes and Pharisees, and Pilate the Roman governor, who by questions went about to ensnare him, he confesseth nothing, but saith, I spake openly to the world, I ever taught in the Synagogues and in the Temple, whither the Jews always resort, and in secret have I said nothing; why askest thou me? Ask them which heard me what I have said unto them: behold, they know what I have said. And when Pilate adjured him to answer him, whether he was such a one or no, well, saith he, thou sayest it: so say I, Thou, Mr. Prideaux, sayest it; they are my books, but prove it.

*Mr. Attorney.* But I think here are enough, and too many: and therefore, gentlemen of the jury, if you respect the government of the parliament, the honour of the Council of State, the honour of the nation, or of the army, or the preservation of the law of the nation, you cannot say but that the prisoner is guilty of such crimes and treasons as he is now accused of, and accordingly find him so: for it cannot be supposed that you will lay him in a single balance against the honour of all the powers in the nation, and also the peace thereof.

*Foreman.* We desire the Act of Treasons to make use of.

*Lilburne.* I beseech you hear me a few words: they desire to have it along with them. Sir, with your favour, I shall humbly crave liberty to speak a few words: I shall keep me

close to that which is my right and my duty, and that is to the matter of law in my indictment. There are many things put into the indictment by the testimonies of witnesses now sworn, that are pretended to be acted in several counties. Whether that be according to law, or no, I do not know whether you will judge it so, or no; but sure I am, if either those express statutes that I have already cited to the Jury, or the third part of Coke's Institutes, be law, I ought not to be tried for treason but by a jury of the next neighbourhood, in the self-same county the fact is pretended to be committed in. And therefore it is very questionable to me, whether my indictment be legal, for that it chargeth me with facts of treason committed in three several counties; and that being matter of law, I desire counsel to argue that point, in the first place. There are also a great many other exceptions I have to make against the illegality of the indictment; and having particularized one, I humbly crave that which is my right by law, that I may have counsel assigned unto me. You have said, you will do what shall become ingenuous and understanding men and just judges in it; and therefore I crave leave, according to my undoubted right, to have counsel assigned to plead in matter of law to the insufficiency of the indictment, and particularly to that point I have nominated. There are also a great many things arise out of the matter of fact that will be points of law likewise, and some of them appear to be so. There were never two clear and positive witnesses to one fact sworn against me; but to most of the particular treasons there is but one a-piece; and I cannot yield that to be legal, but questionable in law, which I desire counsel to dispute. I know not of any of all the books fixed upon me, but the "Outcry," that hath two plain witnesses to it; and yet it is not sworn that I am the author of it. The state of the first is this: that I was at the printer's before the copy was taken away; and that I gave one of those books to a soldier. To sum up the notes of the matter of fact that thereon hath been enueavoured to be proved, is too hard a task to be done by me immediately; and therefore I conceive it but just for you to assign me counsel, to agree with the counsel against me what are the points of fact upon the proof, from which the points of law are to be deducted. And whatever you, that call yourselves my judges, may think of this, yet I hope and verily believe that these my honest fellow-citizens, that are the gentlemen of my jury, who have (thereby), as men, the issues of my life and death in their hands, will think it but a just and rational motion and request; and therefore, before them again, I desire to have counsel assigned, to plead in law to the errors of the indictment, and also to the law arising upon the fact. This, with a larger privilege, was granted by one of your own brother judges to major Rolfe last year, as his right by law; and I do again appeal to Mr. justice Nichols, then one of Rolfe's counsel, for the truth of this. I pray speak,

Sir ; is it not true ? [But the Judge sitting as if he had neither life nor soul, Mr. Lilburne further said :] I hope, Sir, it doth not enter into your thoughts presently to put me to an undigested extemporary answer to so large an indictment as that is that hath been read against me, that it is impossible for any man's brain, if it were as big as the biggest magazine in London, to carry it in his head : and, Sir, I hope you do not conceive that my memory is of a greater largeness than the greatest magazine in this city. You engaged unto me, when I pleaded first to my indictment, that you would not take exceptions or advantage against me for my ignorance in the formalities of the law : I desire you to make good your promise now unto me, and assign me counsel to help my ignorance, that so the counsel against me and my counsel may agree, as I have seen it done heretofore in the case of duke Hamilton, upon the points of fact, from which law is to be deducted. And if you please to grant me this legal and equitable favour, I shall think myself very much obliged unto you : without which justice, I cannot conceive upon what ground it can be comprehended I can go on ; for my time and strength now it is so far spent, that I conceive you cannot think my body is made of steel to stand here four or five hours together, spending my spirits, to answer so many as I have to deal with, and be able, after all this, to stand to return an answer to above five hours charge, and that upon life, when it seems you will suffer me to mend no blots. I hope you do not lie upon the catch, to weary and tire me out, by putting more upon me than a horse is able to endure ; and then go about to hang me, because I, through tiredness, want bodily strength and abilities to make and pronounce my defence.—Sir, to my apprehension, there does arise upon the matter of fact divers disputes in law : I beseech you therefore allow me my right in law, by assigning me counsel to help me where I am ignorant, and you shall see I shall do that which shall become an ingenuous and rational man, and I will put myself clearly upon the trial of the country, or my jury, according to the law.

Lord Keble. Lilburne, this that you have heard, and that we have patiently sat to hear, and prepared a stool for you to have sat upon, to have given you that liberty that nobody should interrupt you more than us ; you have heard the fair course that hath been taken in it. The books, the charges upon the matter, they are but three, they are not hard for your memory. The particulars of those, we do not expect that the jury should remember them. The books are here ; they have of them : but amongst them there are many more. But free yourself from the matter of fact, if you can, and these books : and when you have freed yourself from the matter of fact charged upon you, and then make it appear that from the matter of fact law arises ; and then, if you can, when the matter of fact is clear, and law doth arise, you shall have counsel, and you shall have no defect in us to interrupt you, but to help you

in what we may properly know as our right to do. But if you do not sit clear and make out this, which is the issue upon the point, to answer the matter of fact, we cannot allow you any counsel. The thing that is to be disputed cannot possibly be much on your side ; it will be but very short : for it is not possible, I say, to be much in time, or confusion of your memory, to give an answer to this particular matter of fact : the first is the publishing of those books, and the owning of them ; and the next is the books of themselves. But this must be first cleared, before you can have any counsel assigned you at all.

Lilburne. I must confess it is very hard task for me to contest with the present power, whose agents have free liberty to say against me what they please ; and I am denied, and that upon my life, all the privileges of an Englishman, and with your insinuations and great words drawn on by my ignorance to ensnare myself : and notwithstanding all your promises to take no advantage against me for my ignorance in the formalities of the law, yet are the punctilios and niceties thereof more urged against me, than they have been against hostile enemies. And yet for my part, no man can tax me for being in hostility at any time against them in present power : and yet upon my life I am denied that which I had from those, as my right by law, against whom I have been in arms, and fought against in the field : yea, and that which, in a higher nature than I desire, hath been acknowledged just and legal by some of your own brother judges but the last year, which they have granted to some of my own countrymen, freemen of England, but this last year, in a higher nature by many degrees than I plead for. There is judge Nichols, that I understand was one of major Rolfe's counsel : And I understand from Mr. Maynard's own mouth, that he and Mr. Maynard were, by baron Wyld, assigned of Rolfe's counsel, in case of the highest treason that the law of England ever knew, and that before the grand inquest found the indictment ; and that Mr. Maynard, &c. had liberty, as major Rolfe's counsel, by baron Wyld's order, to stand in the court, not only to hear the witness sworn, but also to hear the words of their testimony, then caused by the judge to be given in open court. And there being but two witnesses to two facts contained in the indictment, Mr. Maynard, upon the allegation of the two statutes of Edward the 6th, that requires two witnesses to the proof of every fact of treason, and that to be plain and clear, overthrew Rolfe's indictment in law, that it was never found ; and so saved the poor man's life, who in likelihood had perished, had it not been for the ability and integrity of his counsel. And all this Mr. Justice Nichols knows is very true, and that I have told you nothing about it but what is just. It is true, I have read part of the plain law of England, that is in English (but I am ignorant of that part of your law, which is three times so much as that which is in Eng-

lish; and that law, or the practic part of the law is in French and Latin, which I have truly told you I can neither read nor understand): Therefore I humbly crave my privilege and undoubted right by the law of England, (which in a higher nature was granted to major Balfie, as his unquestionable right) to have counsel assigned me, to help me in those things I am ignorant of, I mean the formalities and bottom of the law. I beseech you, Sirs, do not put me upon extremities, and upon extraordinary things, but consider among yourselves that righteous rule of Jesus Christ, and of the Scripture, 'To do as you would be done to;' and do not put impossibilities upon me, by over-ruling by your power all my just claims and pleas in law, and require more of me than I am capable to perform. And therefore I beseech you, as you would approve yourselves to be as righteous judges before the eye of that God that sees your heart, and knows whether malicious and fore-thoughts of malice harbours therein against me his faithful servant; do not cunningly and designedly destroy me for my ignorance in the essential or circumstantial matter or form of that huge indictment, that has so much matter of law in it as it hath, and to take away life by denying me that which is the unquestionable legal right of the freemen of England; the which if you will but allow me, I do not doubt but to come off clearly and freely.

**Lord Kettle.** Mr. Lilburne, you are now at a full point, and this you have said now, you have said often, and we have heard it: and that which you say now, we have answered before.

**Lilburne.** Sir, it is your own law; Sir Edward Coke declares I ought to—

**Lord Kettle.** Mr. Lilburne, I shall add this more to it, That you at this time have here such a court, which never any of your condition ever had in England, so many grave judges of the law.

**Lilburne.** Truly I had rather have had an ordinary one; Sir, I mean a legal and ordinary assize or sessions.

**Lord Kettle.** But this you have, and this is to take off, or prevent that which you would do now, if there had been one judge, and no more; and if you had not had this great presence of the court, you would have been malapert, and have out-talked them; but you cannot do so here.

**Lilburne.** Truly, Sir, I am not daunted at the multitude of my judges, neither at the glittering of your scarlet robes, nor the majesty of your presence, and harsh austere deportment towards me, I bless my good God for it, who gives me courage and boldness.

**Lord Kettle.** That your Trial is so public as your offence, is for this end, that all men may take notice, that you have fair play; and therefore according to law, you ought to make your case, in matter of fact, clear; for that I must tell you again, and once is as good as if I had told you a thousand times over, unless you can clearly do that, you say nothing to it. If

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you will take that for clear proof that hath been alledged against you, you may shorten yourself; but otherwise make that defence that you judge most sufficient to disprove the fact; for till that time, you are clear gone in law, and no counsel must or can be assigned you.

**Lilburne.** I have been a great while yesterday pleading my right by law for counsel, and now I have stood many hours to hear your proofs to the indictment. I hope you will not be so cruel to put me to a present answer, when bodily strength is spent.

**Lord Kettle.** We know it as well as yourself you were here, and stood divers hours yesterday, and to-day you have done the like; but we came before you, and stand after you.

**Lilburne.** Sir, will you put a man to more than a horse is put to, or is able to go through with? The righteous man is merciful, even to a very beast.

**Lord Kettle.** We have been as long as you have.

**Lilburne.** But, under favour, you have sat.

**Lord Kettle.** You had that liberty too; dispute no more, we must go on.

**Lilburne.** I desire but a week's time to return you an answer to your large Indictment; and if not so long, then give me leave but till to-morrow morning to consider of my answer. I am upon my life.

**Lord Kettle.** No, you must dispatch it now.

**Lilburne.** Then give me leave but to withdraw into any private room for an hour to recollect my thoughts, peruse my notes, and refresh my spirits. [And hereabouts Judge Jermin did whisper the lord Kettle in the ear; and presently said Judge Jermin, It's against the law to allow you any more time; the Jury stand here charged, the evidence is given, you must immediately go on, or yield that for truth which hath been proved against you.]

**Lilburne.** Well, then, if it must be so, that you will have my blood, right or wrong; and if I shall not have one hour's time to refresh me, after my strength is spent, and to consider that which hath been alledged against me, then I appeal [which he uttered with a mighty voice] to the righteous God of heaven and earth against you, where I am sure I shall be heard, and find access; and the Lord God Omnipotent, and a mighty judge betwixt you and me, require and requite my blood upon the heads of you and your posterity, to the third and fourth generation! [Immediately after the uttering of which the scaffold fell down which was on the left hand, which occasioned a great noise and some confusion, by reason of the people's tumbling; but silence being made, the prisoner was busy at his papers and books, being invited by Sheriff Pack to come out of the bar, for fear he should have fallen with the rest, and so he might have lost his prisoner.]

**Lord Kettle.** How came the prisoner there?

**Lilburne.** I went not thither of my own accord, but by Mr. Sheriff's invitation; and if I am in a place where I ought not to be, blame Mr. Sheriff, and not me.

*Lord Keble.* Dispatch, Sir.

*Lilburne.* Sir, if you will be so cruel as not to give me leave to withdraw to ease and refresh my body, I pray you let me do it in the Court. Officer, I entreat you to help me to a chamber-pot. [Whilst it was fetching, Mr. Lilburne followeth his papers and books close; and when the pot came, he made water, and gave it to the foreman.]

*Lord Keble.* Proceed, Mr. Lilburne. [But he pressed for a little respite, which was granted him with much ado, as also a chair to sit down upon; but within a very little space the lord Keble said,]

*Lord Keble.* The Court cannot stay for you, proceed on to answer.

*Lilburne.* Good Sir, would you have me to answer to impossibilities? Will you not give me breath? If you thirst after my blood, and nothing else will satisfy you, take it presently, without any more to do. [But the prisoner struggled out a little respite.]

*Lord Keble.* The Court can stay no longer; take away his chair, for I cannot see the bar, and plead what you have to say, for it grows very late.

*Lilburne.* Well, seeing I must to it, the will of God be done! [But his brother being next to him, was heard to press him to pause a little more:] No, brother, saith he, my work is done; I will warrant you, by the help of God, I will knock the nail upon the head. [And so he went into the bar, and set the chair before him, and laid his law books open upon them, in order, as he intended, to use them:] and being ready, said, Sir, I humbly crave the favour, since it is my hard lot and fortune, at least in my own apprehension, to have so much hard measure and injustice as I have, to know whether or no you will permit me, after that I have pleaded to a matter of fact, according to the law of England, that has been allowed to the highest traitors, in all the books that I have read of, that I may speak in my own behalf unto the jury, my countrymen, upon whose consciences, integrity and honesty, my life, and the lives and liberties of the honest men of this nation, now lies; who are in law judges of law as well as fact, and you only the pronouncers of their sentence, will and mind: I say, I desire to know, when I have pleaded to matter of fact, whether you will be pleased to give me leave to speak to them a few words besides.

*Lord Keble.* Master Lilburne, quietly express yourself, and you do well; the jury are judges of matter of fact altogether, and judge Coke says so: But I tell you the opinion of the Court, they are not judges of matter of law.

*Lilburne.* The jury by law are not only judges of fact, but of law also: and you that call yourselves judges of the law, are no more but Norman intruders; and in deed and in truth, if the jury please, are no more but cyphers,\* to pronounce their verdict.

*Judge Jermin.* Was there ever such a damnable blasphemous heresy as this is, to call the judges of the law, cyphers?

*Lilburne.* Sir, I entreat you give me leave to read the words of the law, then; for to the jury I apply, as my judges, both in the law and fact.

*Lord Keble.* We will not deny a tittle of the law.

*Judge Jermin.* Let all the bearers know, the jury ought to take notice of it, That the judges that are sworn, that are twelve in number, they have ever been the judges of the law, from the first time that ever we can read or hear that the law was truly expressed in England; and the jury are only judges, whether such a thing were done or no; they are only judges of matter of fact.

*Lilburne.* I deny it; here's your own law to disprove you; and therefore let me but read it. It is a hard case when a man is upon the trial of his life, that you will not suffer him to read the law to the jury, for his own defence; I am sure you have caused to be read at large those laws that make against me.

*Lord Keble.* But I shall pronounce to clear the righteousness of that law, whatsoever others will pretend against it that know it not.

*Lilburne.* Sir, under favour, I shall not trouble myself with any thing, but what is pertinent to my present purpose. Here is the first part of Coke's Institutes; it is owned by all the lawyers that I know, or ever heard of in England, for good law.

*Lord Keble.* If you can convince us, that matter of law does concern the jury, you say something.

*Lilburne.* Sir, I have been shuffled too much out of my liberties already, give me leave to read but the law to the jury; I will make use of nothing new to them, but your own words; and when I have done, I will leave myself to them, and the guidance of God upon their conscience. [And having the book open in his hand, he said,] In the first part of Coke's Institutes, sect. 366, fol. 226, 227, 228, in his exposition of Plowden, he hath these words—

*Lord Keble.* Have we dealt so fairly with you all this while? Pray be confident, those that are quotations there, are not for your purpose; but I thought how good a lawyer you were, for to set Coke's Commentaries upon Plowden, when there is no such book or commentary. Go to your matter of fact, which is clear; but for this, let it fall down, and spare yourself, and trouble yourself no more with Coke; he has no Commentary upon Plowden. [But master Lilburne pressed to speak.]

*Judge Jermin.* Hold, Sir.

*Lilburne.* What, will not you allow me liberty to read your law? O unrighteous and bloody judges!

*Judge Jermin.* By the fancy of your own mind, you would puzzle the jury; we know the book a little better than you do: there is no such book as Coke's Commentary upon Plowden.

\* See something like this in *Fox v. Horne Tooke*, A. D. 1792.

**Lord Keble.** Sir, you shall not read it.

**Judge Jermin.** You cannot be suffered to read the law; you have broached an erroneous opinion, That the jury are the judges of the law, which is enough to destroy all the law in the land; there was never such damnably heresy broached in this nation before.\*

**The Crier** cries out, Hear the Court.

**Lilburne.** Do your pleasure, then here I'll die: Jury, take notice of their injustice; but seeing they will not hear me, I will appeal to you, and say, It is an easy matter for an abler man than I am, in so many interruptions as I meet with, to mistake Plowden for Littleton, I am sure here are Coke's Commentaries upon Littleton, (366.) and these be his words: 'In this case the recognitors of the assize may say and render to the justices their verdict at large upon the whole matter.' Which I am sure is good law, inasmuch as we see it continually done in all actions of trespass or assault, where the jury doth not only judge of the validity of the proof of the fact, but also of the law, by assigning what damages they think is just.

**Lord Keble.** I am sure you are in an error, in a gross one, as possibly a man can be in; this is so gross, that I thought it could not have come from Master Lilburne, that professeth himself to be a rational and knowing man.

**Lilburne.** And in another place he saith, 'For as well as the jurors may have cognizance of the lease, they also may have cognizance of the condition.' And further there Coke saith, 'Here it is to be observed, That a special verdict, or at large, may be given in any action, and upon any issue, be the issue general or special.' And in section 368, Littleton hath these words: 'Also in such case, where the inquest may give their verdict at large, if they will take upon them the knowledge of the law, upon the matter they may give their verdict generally.' Coke's words upon it are fully to the same purpose, who saith, 'Al- though the Jury, if they will take upon them, (as Littleton here saith) the knowledge of the law, may give a general verdict.' I am sure this is pertinent to my purpose, and now I have done, Sir.

**Lord Keble.** You have spent a little time, but you have done yourself no good; I thought you had understood the law better than I see you do.

**Lilburne.** Now, Sir, as to matter of fact, according to your own desire, seeing you have broke your promise, and will allow me no counsel, but lye at catch with me, I shall come to it without any preamble. The statute of 1 Edw. 6, c. 12. (I desire the Jury may take notice of the statutes) and the 5th and 6th Edw. 6, c. 11, here is the Statute-Book, which doth

expressly declare, That no man shall be condemned for Treason, Petty-Treason, or any such like crime, but by the Evidence and clear Proof of two legal and sufficient Witnesses. Sir Edward Coke in his third part of Institutes, chap. of High-Treason, is absolutely of the same opinion, fol. 12, 'In this branch,' says he, 'four things are to be observed. First, this word (probably) provably; that is, upon direct and manifest proof, not upon conjectural presumptions, or inferences, or strains of wit, but upon good and sufficient proof of two witnesses.' And this is fol. 12. And herein the adverb 'provably,' provably, hath great force, and signifieth a direct and plain Proof. 'And, secondly, this word (attaint) necessarily implieth, That he be proceeded with, and attainted, according to the due course and proceedings of law, and not by absolute power, or by other means, as in former times it hath been used.'—And fol. 24, chap. Petty-Treason, he saith, 'It hath been holden, That upon the Trial of Misprision of Treason, there must be two lawful witnesses, as well upon the trial as the indictment;' as it was resolved by the justices in the lord Lumley's Case, Hill. 14 Eliz. reported by the lord Dyer under his own hand; and in the margin he hath this note upon it, 'That this is the last Resolution of the Judges upon it.' And a little below, in the same fol. and fol. 25, he saith, 'Therefore upon the Indictment, which is in manner of an Accusation, by the statutes of 1 Ed. 6, cap. 12, and 5 and 6 Edw. 6, cap. 11, two lawful witnesses are requisite.' And in fol. 240, he hath the same, his words are these: 'Attainders of Treason, &c. ought to be upon plain and direct evidence,' (as before is said); 'for if the party be executed, restitution may be had of his lands, but never can be had of his life.' Now I have done, Sir.

**Lord Keble.** I hope the Jury hath seen the Evidence so plain and so fully, that it doth confirm them to do their duty, and to find the Prisoner guilty of what is charged upon him.

**Judge Jermin.** This that you have said, makes much for the Jury.

**Lilburne.** We shall see that by and by; but I shall proceed on to answer your Proof to the Indictment, and that in the same method that your Witnesses swore. And therefore, Sir, in the first place, to the first, which is Thomas Newcombe the printer; he swears in these words: That I was present with captain Jones, from whose hands he says he received the last sheet of the book, called "The Outcry of the Young Men and Apprentices of London." But he says, Captain Jones agreed with him for the printing of it, and not I; for in that particular he doth not in the least accuse me, neither doth he in the least accuse me in any manner in the world of being the author of it; and that I did any more at his house, but take away a single sheet of it before it was corrected; which, says he, I brought away with me. In answer to whose testimony I return this;

\* Yes, but there was at Reading, when colonel Martin, after they were sworn, caused all the jury before the judges sitting upon the bench, to put on their hats, as their right; being they were then the chief judges in the Court, and the other inferior to them. Orig. Edit.

and I earnestly entreat you, gentlemen of the jury, to observe it well; and therefore, in the first place, he is but a single testimony to this. But, secondly, I answer, That he confesses moreover, that before he had completed that sheet that he received from captain Jones, he was taken; and not only he, but his forms also were taken from him. So that by his own confession, that copy that was brought by captain Jones, when I was present with him, proved abortive, it was never wrought; for he says, it was taken before he had perfected it; and to my knowledge they had it in their possession. So that it clearly appears, it was never perfectly wrought off; and therefore the books were never perfected: therefore I hope that it will not be Treason in me, being a freeman of England, to walk the streets with my friend, and to go into a house with him where he hath business to do; admit it to be a printing house, where he intends to have a sheet of paper printed: his affairs, business, or actions are nothing to me, neither are they now in the least laid to my charge; and if they were, as they are not, yet that sheet miscarried, and was taken before it was perfected. So that truly, Sir, you may go seek the printer of it; for you see that miscarried that captain Jones delivered to the printer in my company; and that sheet which he saith I had away, was an uncorrected one, which could serve me for no other use, but waste paper, and cannot be adjudged to be a true copy of that which was contained in the Indictment; neither doth he or any other swear, that at the printer's they see, or know where was done the title of that "Outcry" contained in the Indictment. So that for any thing the Jury knows, the first part of that book hath no dependance upon the sheet that was spoiled, and not brought to maturity in Master Newcombe's hands, as he himself upon his oath declares. So that truly, Sir, in law Master Newcombe's testimony proves nothing all against me, as to that book mentioned and contained in the Indictment: And therefore, you gentlemen of the jury, my life is in your hands, I beseech you take notice, That in all his testimony there was not one word that he declared, to accuse me to be the author of that book, or that my name was to it; for you shall find the names of ten that own it; so that I think his testimony is gone, and is not worth a straw.

In the next place, there were three soldiers, viz. John Tooke, Thomas Lewis, and John Skinner, that swear against me: The substance of all their testimonies centers in one; and John Tooke in the first place saith, about seven weeks ago he met with lieut. col. John Lilburne in Ivy-Lane, where Lewis knowing of him, gave him a salute; and they being glad to see him that he was well in health, and the like, out of friendship went to drink a cup of beer together at the Red-Cross in Newgate-market, where he saw a book called "The Apprentices Outcry," given unto master Lewis: and he heard these words uttered by lieut.

col. Lilburne, 'You soldiers are those that keep us in slavery.' The second Witness, being Thomas Lewis, saith, That the 6th of December or September, for so was his words, he met me in Ivy-Lane, and took acquaintance of me, asked me how I did, and I thanked him: and he further declares, that he was very much refreshed to see me, that I was well, and in health, and was glad to see that those things that were given out of me by common fame, that I was killed or dead, that they were not true. Therefore he being my old acquaintance, as he saith, we went to drink a cup of beer together; and says he, remembers, lieut. col. Lilburne asked him if he had seen a book called "The Apprentices Outcry," and he said no, he had not seen it, but he had heard of it, and was thinking to go and buy one of them, for that he longed to read it, and heard it was publicly sold: and says he, lieut. col. Lilburne says he had one which was given him, and if he pleased he would give it me, which he thankfully received; and afterwards we staid a little time to drink a cup of beer, and had some discourse. But he doth fix no evil upon me that fell from me in that discourse; neither doth he say, that I did stir him up to mutiny, or to make division in the army; only he saith, I told him, that if he went to such a man, whose name he hath forgot, it is possible he might buy some more of them, for they were publicly sold all over the city. So that you gentlemen of the jury may take notice, that he declares the things by common fame were publicly sold, and one of them he says was given to me, and I gave it to him. Truly, I hope the Jury hath more conscience in them, than to go about to take away my life for giving away a single sheet and a half of paper, that no man swears I was the author of, or the causer of it to be printed and published: but the most that can be fixed upon me, is, that I had one of them given me and I gave it to a soldier, my familiar friend, who had a great desire to see it, and was going to buy one of them, being public up and down London, at that time, which is all that he doth charge upon me; only he says further, that there was a little discourse: but his testimony doth not reach to accuse me of any evil or malicious counsel given them, or any aggravations of spirit, as though I did incense him or them against their officers or fellow-soldiers, thereby to stir them up to mutiny and rebellion. For truly I have made it my work, for to be as sparing of my discourse as I could be, in the company of any belonging to the army; yea, and to shun coming nigh the place, if I can avoid it, where they are. And he saith, I had no aggravating spirit within me, nor uttered any provocations to make them rise in mutiny against their officers; and there is none of them all that does in the least fix that book upon me, to be mine, as the author of it.

Only he saith further, That upon his declaring he longed to see the book, that lieut. col. Lilburne told him that such a man, whose name he hath forgot, might possibly sell them some of them, if they had a mind to them, or to get some of them : and truly I do not believe that treason.

Further he says, all the worst discourse I had with them, was, that I asked them a question, which was, when they had any pay ? and they told me, they had not had any pay in five weeks : and that was the worst of all. There proceeded from me no aggravating expressions upon it, or mutinous provocations. But truly that this discourse should come within the compass of treason, to ask my old acquaintance a question, that had oftentimes visited me when I was the Lords prisoner in the Tower, or to drink a cup of beer with him, or to give a sheet and a half of paper that was publicly sold ; truly, I hope there will be no righteous jury in the world that will give a judgment against me for treason therefore ; no, I hope for more righteous justice from a jury of citizens of London whom I hope to find men of consciences and judgment, yea, of such righteous judgment, as that they will abhor to go about to take away my life, and my blood and lay the blemish and stain of treason upon me and my posterity for ever, upon such a thing as this. And this is all, and the utmost of all, that the evidence doth witness against me.

Then in the third place there was John Skinner, who was the third ; and he says the same in effect, and so more ; and therefore I need not go upon that any further, but shall leave it, I hope, to the enlivened consciences of my jury, my fellow-citizens of London.

In the next place, the second thing laid to my charge is the "*Salva Libertate*," delivered to the lieutenant of the Tower, as he says. Now truly, the lieutenant of the Tower is but a single witness to this, and the law saith positively, there shall be two legal witnesses, to prove every fact of treason, whose testimony or evidence ought to be as clear and evident as the Sun at noon-day, without any conjectural presumptions or inferences, or straits of wit : and truly the lieutenant is but a single witness at most. I should be loth to reproach or bespatter the man ; yet I must say this, being upon my life, that he is not only a single witness, but a gentleman in whose custody I was prisoner, contrary to law ; who kept me prisoner in times by-past, above twelve months together, at the House of Lords illegal command, contrary unto law and justice : for which, above a year since, I did commence at the common law an action of four or five thousand pound against him, as I did also against col. Tichburn, that I have seen upon this bench, sitting as one of my judges : which I think is not equal, nor just, nor legal, that he with whom I have a suit of four or five thousand pound depending, when thereby my professed adversary, should be one of my judges : and there-

fore I desire he may be commanded off the bench, and withdraw, as being my professed adversary, and therefore in law incapable to be my judge. And truly having the same action depending still against the present lieutenant of the tower, before the judges of the King's bench, for his detaining me in prison above a year together, contrary to law ; he is thereby in the eye of the law my professed adversary, and therefore in law cannot be admitted as a competent witness against me, upon my life. Yet the lieutenant of the Tower doth not in the least swear that the hand is mine, or that he did see me write it ; but only he saith that I did deliver such a paper to him : but he is but a single witness, and so I say by the law of the land not valid or good ; but his testimony is clearly gone and wiped off, as also all things that do depend thereupon. There are besides five or six witnesses produced to several charges ; but the law expressly saith, that there must be two plain and clear witnesses to every particular charge, or fact of treason, that must take away my life, and this is your own law : and therefore he is but a single one, and therefore invalid, and altogether not satisfactory or binding. And then beside, which is considerable, truly I think the Tower of London, in the place where he saith I gave him those papers, is not within the jurisdiction of the city of London ; and how I should come to be arraigned by a jury of my fellow-citizens here in London, therefore, against whom I must confess that for my part I have nothing for their honesty and integrity to object, I know not : for I know not the faces of any two of them, and therefore impossible for me to say any thing against them. I say, I know not how by a London jury I can be tried for a fact fixed upon me to be committed in Middlesex. I beseech you, gentlemen of the jury, mistake me not ; for I have nothing to accuse you of ; and I hope you will be so conscientious and tender in the trial of me for my life, that you will put your case as my case, and do by me as you would be done unto by me, if you were in my case and condition ; and the righteous God of Heaven and Earth direct you so to do ! And therefore the lieutenant of the Tower being but a single witness at most, and in law not a competent one neither, being my professed adversary, that hath most illegally kept me in prison, for which I have commenced long since my action at law for my legal reparations against him ; I say, therefore in the eye of the law his testimony sticks not, and I hope, in the righteous opinion of the jury, can do me no harm : and if so his testimony be invalid, then the "*Salva Libertate*" cannot reach me, to do me any hurt ; but it and all those my pretended books called by my name, are all washed away and gone, and my adversaries must go seek new authors for them, or at least procure new and better testimony to prove them mine ; for that which they have produced hitherto is worth nothing.

Then the next is Thomas Daffern ; and he

says, that the Twelfth of August, 1649, he met with lieut. col. Lilburne upon the bridge, as he was going home to visit his sick and distressed family, and he went back with him to his house in Southwark, at Winchester-house, which I am sure is not in London; and therefore at Guildhall in London, by a London jury, in law cannot be tried: for he positively saith, That at Winchester-house in Southwark, which is in the county of Surry, lieutenant col. John Lilburne gave him a book to carry to col. Ayres, a prisoner at Warwick-Castle; but he does give in no testimony at all that it is mine, or that that book was lieut. col. Lilburne's book, of his making or penning; but a book he gave him, and that is all he says: which is no more but that he received a book at Winchester-House in Southwark, from the hands of lieut. col. Lilburne, to carry to col. Ayres, now a prisoner at Warwick-Castle. Now, truly, he is but a single testimony, and he swears nothing particularly as to me; and besides, what he swears is to a fact done in another county, and therefore his testimony is not worth a straw; it is gone, it is invalid in law, it signifies nothing, it is not so good as a spider's web. By virtue of which, the marshal's testimony, and the governor's of Warwick-Castle, as also col. Purefoy's, need no other answer from me, but to pity them for the long journey they have made to no purpose.

The next thing charged upon me, is the "Preparative to an Hue and Cry after sir Arthur Haslerig;" to which the lieut. of the Tower says, that lieut. col. John Lilburne gave him one of those books in the Tower, which truly I am confident is in Middlesex: and truly I conceive, under favour, it will be a point disputable in law, that I should be tried for my life in this place, admit there were a thousand witnesses to make it good that the lieut. of the Tower had one of them from me, either in the place he formerly named, or at his own house; for that fact was done in the Tower, that is out of the county of London, and so not triable by a jury of citizens of London. But he further saith, Whether the book that he now has, be the same that he received from the hands of lieut. col. Lilburne, that he is not able to depose.

Then the rest of the Witnesses that do depose against me in relation to the "Hue and Cry," are James Nutleigh and Edward Radney, both of them Mr. Prideaux's servants; and the most that they say is, that when I was before their master, upon the 24th of September, 1649, at his chamber in the Temple, to be examined by him, they say they saw me deliver, "A Preparative to an Hue and Cry after sir Arthur Haslerig," to their master's hands, and tell him that was mine, and I would own it, saving the printer's erratas; which, says the lieutenant of the Tower upon his oath, I expressed to be many.

In answer to which, I say, I do not know whether the Temple be within the liberties of London or no; and if it be not, I know no

ground in law, wherefore a London jury should try me here. But more fully I say, for any thing the jury knows, or for any thing the witnesses swear, the printer's erratas, which are many, are all and every of those clauses that offence or exceptions are taken against; for not one of those clauses which you except against, are not proved not to be the printer's erratas: and therefore there is no validity or weight in those testimonies also, for they do not prove in the least that any six lines of the book is mine; all of them say that I owned no more of the book than was free from the printer's erratas. And the lieutenant of the tower swears that the clause was added, 'which are many.' And therefore you, the gentlemen of the jury, I appeal to your consciences, and to your judgments, and the Lord set it home to your understandings, that you may not be guilty of the blood of an innocent man, by partiality, fear, or affrightment of spirit; for in law, equity, and justice, all their three testimonies put together have no validity, no strength, nor force in them: and so much for that.

The next thing fixed upon me, is "The Legal Fundamental Liberties of the people of England revived, asserted, and vindicated;" and truly all that is brought to prove "The Legal Fundamental Liberties of England" to be mine, is but merely the relations that are in the forementioned books: for I do not remember, nay, I am sure of it, that there is so much as a single testimony that does give in any evidence against me that it is mine; and therefore I can answer to that nothing more than what I have said already: The testimonies all being invalid, at least in the eye of the law; and therefore that's gone too, and blown away as chaff before the wind.

Lastly, for the "Agreement of the People," truly that is dated the first of May 1649. And truly, for aught I know, and I am sure of it too, it is before the date of any of those acts upon which I am indicted for my life; and therefore not within the compass of it. For Paul, that great apostle said; and he that spoke by the spirit of God that dwelt within him, and to whom it was given in an extraordinary manner, that so he might thereby be enabled to write the infallible truths of God, said, 'Where there is no law, there can be no transgression.' But that agreement was in being, and publicly abroad with a legal imprimatur to it, before any of the acts, upon which I am arraigned, had a being; And therefore, admit it should be granted to be mine, yet it can be no transgression for any thing prejudicial in the eye of the law unto me. But besides, there is not any testimony at all, that so much as lays it to my charge to be mine; and therefore it pinches me not, nor does any of all the rest of your charges. And besides all that I have already said in my own behalf, to shew in law the invalidity and insufficiency of all the testimony

you have produced against me, I add this by way of addition to it, That there hath not been so much as one single witness or testimony to prove that the Books laid to my charge are rightly and truly dated, and not post-dated; which if any of them, or all of them should be, admit the proofs were sufficient in law; yet unless the days of them be firmly proved to be exactly according to the original copies, and not post-dated, for any thing the Jury knows, they might be made and writ before ever the acts, they are said to transgress, had a being. And therefore if there were so many testimonies in law to prove the Books mine, (which there is not in the least) yet, I say, admit there had been a thousand witnesses to the proof of every one of those Books; yet notwithstanding in the eye of the law, I leave it to the consciences of my Jury, whether I be not free in that particular, seeing there is none swears punctually and positively to the dates of them. But to put all out of danger, as I deny nothing, so in that particular I do not own a jot, a line, a word, a syllable of any one of them. Now, Sir, having done so far as I have, and clearly discovered to the Jury, and all that hear me this day, that all the proofs alledged against me do not stick, in the least, any guilt upon me, truly I have clearly answered and invalidated all the verbal proofs, according to the clear letter and true intention of the law. I have no more to say to all the evidences that have been read in Books against me. I leave it to the consciences of my Jury, believing them to be a generation of men that believe in God the Father, and believe they shall have a portion in the resurrection of the dead, and stand before the tribunal of the Lord Almighty, to give an account unto him, the Lord of Life and Glory, and the Judge of all the Earth, of all their actions done in the flesh: I leave it to their judgments and consciences, to judge righteously between me and my adversaries; and the Lord of Life and Glory, to judge right between me and you, that in all those things in your long scrawl you pretend me guilty of, I hope I have so clearly and fully answered all and every of your proofs, that not any one thing sticks. And to their consciences I cast it; hoping that they do look upon themselves as standing in the presence of him that sees their hearts, and knows now whether there be any malice in them towards me, or no; which, for my part, I do not believe there is; for I profess, I know no wrong I have particularly done them as men, or generally as Englishmen. My conscience is free and clear as in the sight of God, and, I hope, of all unbiased men. And, to my knowledge, I never saw the faces of any two of them before this day; and therefore, entirely as an Englishman, that loves and honours the good old laws of England, and earnestly desires, and endeavours, and struggles, for the preservation of justice and just magistracy, which I wish with all my soul may be preserved; and therefore having suffered much for the preservation of the common and just liberties of England, to their

consciencies and to their judgments I leave both this matter, and the constant series of all my actions in this my pilgrimage and vale of tears here below.

Lord Keble. Mr. Lilburne!

Lilburne. Your pleasure, Sir.

Lord Keble. Nothing, Sir, but this: Our consciences are before God, as well as yours; and therefore you need not speak thus.

Lilburne. Sir, I have only two or three words more, which I have spoken to you: but these men, that are my jury and judges, in whose hands only are the issues of my life, have not as yet heard them. I pray you, give me liberty, according to your promise, to go on without interruption. You Gentlemen of the Jury, I have many material things to produce witnesses unto for my justification; but no time in the least will be allowed me, as you see, to produce them, which I ought by law to have had; especially considering I have been locked up so long close prisoner, and have nothing for which I was first imprisoned laid unto my charge, and have so high, potent, and mighty adversaries as I have; and truly every man is shy of me, for fear he may come into trouble for coming near me. And therefore, I have but two or three words more to speak to the Jury; I beseech you, let me freely go on.

Lord Keble. Make them thirty to your Defence, and you may speak them.

Lilburne. I shall, by God's assistance; I shall keep close to my defence. Now, Gentlemen of the Jury, I think I have sufficiently pleaded for myself at this present; and that to clear up fully unto your judgments, and to your understandings, that by the law of England there is not so much as any one fact proved against me; for the law is express, that to every particular fact of treason there must be two sufficient witnesses, not by constructions, or the like: Upon which score and plea that gentleman, master Nichols, that sits there as a Judge, and master John Maynard, saved major Rolfe's life, being to be arraigned for the highest of English treason before baron Wyld. Now, gentlemen, if, notwithstanding what I have said, any thing shall yet stick upon your spirits, I shall intreat you to consider the intention of the law of England: It is repeated several times in sir Edward Coke's Institutes; it is a maxim in the law, I have it here in the third part of his Institutes, fol. 6. 'Et actus non facit reum, nisi mens sit rea.' Sir, if you please to do me the favour but to English it, and explain it for the Jury? For though I understand the substance of it, yet I am not exactly able to English the Latin, but only to understand the sense of it. I conceive the sense of it is this: It is not the act, but the intention of the mind, that declares the guilt. But therefore as in reference unto that, I shall say no more but only this to them, That the constant series of all my actions, from my youth hitherto, have manifested, that I have, with an affectionate and compassionate English spirit within me, that hath put me forth for many years together really to en-

devour the prosperity and good of the land of my nativity, and not its mischief and destruction; and that hithertoward, in all my contests, I have had the law, and the declared public justice of the nation to my side, having never done any mischief to my country, unless it be a mischief to oppose great men's wills. I have now been seven months in prison, I know not wherefore, although originally I was committed to prison pretendedly for treason: and both the Acts upon which now I am indicted, have been made long since my first commitment. There is not any one syllable of all those things for which I originally in general, without accuser or prosecutor, was voted a traitor by the present power; and for which I was proclaimed a traitor throughout all the market and great towns in England six months ago. There is not now, I say, any one of those things laid to my charge. But truly I have been laid into prison for nothing, as by this day's work clearly appears, by the men in present power: unto divers of whom I have often sent, to know what it is they require at my hands; and have also from time to time declared my ready willingness to compose and end all differences that concern me, having proffered again and again to refer myself unto the final determination of four of their own members, finally to end and determine all differences betwixt them and me; whereof I was willing that Judge Rigby should be one of them: a Gentleman, though now a Judge, I have found very honest and faithful, and to whom I have been much obliged for many hearty favours I have from time to time received from him. I say I have sent to him and col. Martin, and abundance of members besides, from time to time; to some of whom I have written, with some of whom I have spoken. I say, I have sent many messages with the earnestest desire in the world, that if I had offended any man in the house, that if he would be pleased fairly and friendly to refer it to the final judgment and determination of four members of their own house, I would stand to it. And let all the world judge whether, or no, this proposition was not suitable to a Christian, and suitable to an honest man; yea, to a man that judged himself in the strictest scrutiny of his own conscience to be free and innocent in his own soul, and in his own conscience, from all guilt, crimes, or treasons; or else, if I had not, I would not have put myself upon the judgment of those that were engaged in interest and self-preservation against me: and yet for the things that they imprisoned me for as a traitor in general, which I hear nothing of this day, which is wonderful strange law and proceedings, to my understanding. But besides, Sir, under favour, I have not only done this, but I have yet thousands of my friends, I will undertake I could produce 10,000 of old and young, males and females, citizens and countrymen, men of honesty and integrity, that have in the common cause always adhered to the freedoms of the nation, that have petitioned the parliament

several times, yea, from time to time, with abundance of rational and fair petitions, and truly stated my case to them, and acquainted them with my condition, and with the rest of my fellow-prisoners; and earnestly begged and intreated of them, that they would not be heavy in condemning and destroying me before they had heard me, and afforded me a legal trial, from first to last, according to the due forms and process of the Law of England. And yet for all this, till I came before you, I never saw accuser or prosecutor, nor indictment or charge, nor nothing in all the earth, legally to demonstrate me so much as a supposed offender. And yet for all this, no satisfaction in the world would be received; notwithstanding in one petition they desiring that they would be pleased, seeing they were incensed against us, and that they had taken indignation against us, they did not desire to justify us in any thing we had done; but in regard, to their own knowledge, we had been all four faithful, zealous, and serviceable instruments in the common cause of the nation: In which to the hazard of my life an hundred times over, I have engaged for them, with my sword in my hand, with as much resolution, and as much faithfulness, as any man on earth ever served a generation of men; having never betrayed my trust, or ever given any suspicion in the least, that I would; or ever so much as staggered in my principles, nor ever so much as disputed any commands, though ever so desperate, that were laid upon me; no, nor ever turned my back in the field off their enemies in any of their services, so long as it was possible for a man that had any brains left him to stand; but was one of those 700 men at Breatford, (myself being there a volunteer, without any particular command) that with dint of sword stood it out against the whole body of the king's numerous army for many hours together, and never stirred off the ground till both horse and foot had, as it were, encompassed us round, and till we came to a readiness to beat out one another's brains with the butt-end of our musquets: where I was taken a prisoner, and led captive in a most barbarous and disgraceful manner to Oxford, where I suffered abundance of unexpressible hardships, and underwent the shock, and rid the storm, as stoutly as any man there, although I believe I was as much courted by messages from the king himself, as any or all the parliament-men that were there my fellow-prisoners; for there I have had no less than four earls and lords in one day sent unto me by him, to draw me over to them: but I bless God, that kept me upright and entire unto my integrity and principles, and suffered me not to turn my back upon them. But, Sir, notwithstanding all this, (I say) our friends desired of the parliament that they would be pleased to take sufficient security, according to the law, for our forthcoming at all times, to answer such things as should be laid to our charge; but their petitions were contemned, themselves slighted and

abused, and by no means could get any satisfactory answers to them. Sir, I speak here to you, and to my fellow-citizens the jury, as in the sight and presence of God, that knows I lye not. and if you find me to be in a lye, in the least, in what I have said, then never credit man of my profession again for my sake. Truly, Sir, I say, they desired them that we might be released from our imprisonment, putting in security to answer whatsoever legally could be charged upon us; only they craved we might have the same legal privileges that they demanded at the hands of the king, when he impeached the lord Kimbolton and the five members of high treason; which privileges are easily and plainly to be read in their own first "Primitive Declarations," p. 38, 39, and 76, 77. Now abundance of the free people of this nation, in my behalf having craved the same privileges that were demanded for the lord Kimbolton, and in the behalf of the five members, and the like; all that they desired was no more but the same privileges that they craved for them; which was, that I might have the due process of the law, from first to last; and I and my accusers come face to face at the beginning before an ordinary magistrate; and if they had any thing to lay to my charge, that they would legally according to law, proceed with me. But, I say, none of these would be granted, although themselves in several of their declarations have declared all these things to be the common right of all or any of the people of England, as well as parliament men. Yet notwithstanding all this, they continued in their incensed condition against me, and would come to no legal nor fair issue with me; nor let me in the least know what was the end or thing they required of me, or what was the thing that would satisfy for the extenuation of their indignation against me; but contrariwise dealt harder and harder with me; in laying new and fresh insupportable burthens and provocations upon me: for after all this, they caused me to be locked up close prisoner in the heat of summer, set sentinels night and day at my door, denied me the access of my wife and little babes; for a certain season neither wife nor child could so much as set their feet within the gates of the Tower to see me, or comfort me in my distress.

Lord Keble. Mr. Lilburne, is this your Defence?

Lilburne. I beseech you, as either the law, or fear of God, conscience or common honesty dwell within you, let me have a little fair play to go on to speak for my life without interruption; I shall not trouble you long, for I have almost done.

Lord Keble. When your matter of fact is to defend yourself, and to answer the proof upon that; and that is it we are to hear, and not to hear you tell the story of all your life; and then if we should reply to these particular things, they will be such as most of them will vanish, and do you no service, but take up a great deal of time. Do not

tell us a story, but go on to finish the matter of fact.

Lilburne. It has been your favour to give me leave to tell it over to you, I pray give me leave to declare it to my jury, who have not heard it before; and it is very material to my preservation, and my life lies upon it: therefore do not deal with me as proctors, and engaged men, with those that thirst for my blood; and laying aside that evenness of hand betwixt both parties, that ought to be in all just and righteous judges.

Lord Keble. It is nothing to this; if it be any thing in the world to do you good, in the way of your course of defence, you should have it.

Lilburne. Well, if you will let me go on no further to make my defence, I cannot over-rule you, though you over-rule me; my blood be upon your heads, and the Lord God of heaven and earth reward you for all your blood-thirsty cruelty towards me his innocent servant this day! And so I have done with it: and what I have said, I have done with it, and leave it to the jury, earnestly begging and intreating them to take notice of your cruel and unjust dealing with me, in denying me all the privileges of an Englishman, when I am upon my life.

Lord Keble. What is material, you shall not be debarr'd in it.

Lilburne. O, Lord, Sir! What strange judges are you, that you will neither allow me counsel to help me to plead, nor suffer me myself to speak for my own life! Is this your law and justice, Sir? I have no more to say but this, seeing you straiten me; although you said you would hear me till midnight. I hope I have made it evident to all rational men, that all or any part of the testimony given in against me, does not in the exact eye of the law in the least touch me, although I have been most unjustly imprisoned, and most barbarously used, and tyrannized over; yea, and my estate by will and power taken from me; that should have kept me and mine alive, and the legal and customary allowance of the Tower denied me to this day. And although I have used all Christian and fair means to compose my differences with my adversaries, yet nothing would serve their turns, but I must have oppression upon oppression laid upon me, enough to break the back of a horse; and then if I cry out of my oppressions in any kind, I must have new treason-shares made to catch me, many months after their oppressions were first laid upon me, that if I so much as whimper or speak in the least of their unjust dealing with me, I must die therefore as a Traitor. O miserable servitude! and miserable bondage, in the first year of England's freedom! I have now no more to say unto you, but only this. Your own law tells me, sir Edward Coke speaks it three or four times over in his 3d part of Institutes, That it is the law of England, that any by-stander may speak in the prisoner's behalf, if he see any thing urged against him

contrary to law, or do apprehend he falls short of urging any material thing that may serve for his defence and preservation. Here is your own law for it, Sir; Coke is full and pregnant to this purpose in his 3d part of Institutes, fol. 29, 34, 37. But this hath several times been denied me in the case of Mr. Sprat, my solicitor; and now I demand it again, as my right by law, that he may speak a few words for me, according to his often desire, both to me and the court. I have almost done, Sir; only once again I claim that as my right which you have promised. That I should have counsel to matter of law; and if you give me but your own promise, which is my undoubted right by your own law, I fear not my life; But if you again shall deny both these legal privileges, I shall desire my jury to take notice, that I aver you rob me of the benefit of the law, and go about to murder me, without and against law: and therefore as a free-born Englishman, and as a true Christian that now stands in the sight and presence of God, with an upright heart and conscience, and with a cheerful countenance, cast my life, and the lives of all the honest freemen of England, into the hands of God, and his gracious protection, and into the care and conscience of my honest jury and fellow-citizens; who I again declare by the law of England, are the conservators and sole judges of my life, having inherent in them alone the judicial power of the law, as well as fact: you judges that sit there being no more, if they please, but cyphers to pronounce the sentence, or their clerks to say Amen to them; being at the best in your original, but the Norman Conqueror's intruders. And therefore, you Gentlemen of the Jury are my sole judges, the keepers of my life, at whose hands the Lord will require my blood, in case you leave any part of my Indictment to the cruel and bloody men. And therefore I desire you to know your power, and consider your duty both to God, to me, to your ourselves, and to your country: And the gracious assisting Spirit and Presence of the Lord God Omnipotent, the Governor of heaven and earth, and all things therein contained, go along with you, give counsel and direct you, to do that which is just, and for his glory!

[The People with a loud voice cried, *Amen*, *Amen*, and gave an extraordinary great hum; which made the Judges look something untowardly about them, and caused major-general Skippon to send for three more fresh companies of foot-soldiers.]

Mr. Attorney. Gentlemen of the Jury, you have heard the Evidence in behalf of the state; you have heard the insinuations of the Prisoner upon them, as calling you his fellow-citizens, and the like: He hath said, and spoken; we have proved, and it is in your consciences to believe proof, before saying. The Prisoner began to cite you two acts of parliament; the one in the 1st of Edward 6th, and the other 5th and 6th of Edward 6th; and by those two

acts he would signify to you, that you should have two plain and evident witnesses to every particular fact: yet he did forget to cite another statute made in the first and second years of Philip and Mary, that overthrows and annihilates those two statutes that would have two plain witnesses to every fact of Treason; and in all cases of Treason will have them freed, according to the common course of law, the common law for the trial of them. If that must be material, or if that stick with you, that you cannot determine it, my lords the judges will direct you in it, and in all other points of law. But certainly that exception was a little vain too; for we did not insist with one particular witness in nothing at all: For that of Newcomb, the Prisoner did not repent fully what he said; for I remember he said this, That Mr. Lilburne and captain Jones came together, and brought the copy of the last sheet that was to be printed: if one come with him, and the other delivered it to the printer, they are both equally guilty alike. They came again the same day at night; and when the first sheet was printed, to be sure it was true and right Mr. Lilburne did take the pains to take one of the copies into his hand, and corrected it.

Lilburne. By your favour, Sir, he urged no such thing: by your favour, Sir, they are the express words of the testimony, to the quite contrary; and I wonder, Mr. Prideaux, you are not ashamed to aver such notorious falsehoods, as you do, in the open face of the court, before thousands of witnesses; for Newcomb said no such thing, as you falsely affirm; neither is there any such statute in queen Mary's time that doth abolish those two statutes of Edward 6th, that I insist upon for two witnesses: name your statute if you can; here is the statute-book, let the Jury hear it read; do not abuse them with your impudent falsehoods.

Mr. Attorney. Well, Sir, I leave it to the judgment of the Jury, Sir. My lord, as for all the rest, and particularly for that of the "*Salva Libertate*," it is true, there is but one witness, which is sufficient enough by the fore-mentioned act of queen Mary: but, my lord, it is under Mr. Lilburne's own hand, he will not deny it.

Lilburne. By your favour, there is no man so swears, in the least, that it is my hand: Jesus Christ denied none of his accusation; yet when they went about to ensnare him by questions, he answered Pilate, &c. 'Thou sayest so: go to those that heard me, they know what I said; why ask you me?' Sir, I beseech you produce your act of parliament in queen Mary's time, to prove, in cases of Treason, there ought to be but a single witness.

Mr. Attorney. Do not interrupt me, Mr. Lilburne.

Lilburne. I pray you then do not urge that which is not right nor true, but notoriously false; for if you persevere in it, I will interrupt you, and tell you of it to the purpose.

Justice Jarmin. Though you do recite many

things, yet I must tell you, the law of the land saith, The Counsel for the Commonwealth must be heard.

*Lilburne.* I beseech you, then, let there be no more added to the testimony, than right and truth; for my life lies upon it, and I must and will declare the baseness and the falseness of it.

*Mr. Attorney.* I would not do the tenth part of the hair of your head wrong; but being entrusted, I shall do my duty, and discharge my conscience in my place, which is fully and plainly to open that unto them which in my conscience I think is right and just.

*Lilburne.* I do repeat it thus, as in my conscience, that he did say, when the copy was first brought, captain Jones gave him the copy, and captain Jones did agree with him for the printing of it; and captain Jones did read the original to his corrector, which corrector amended the printer's faults, and that I had an uncorrected sheet away; and that his forms were taken before he had perfected that.

*Mr. Attorney.* And Mr. Lilburne came the second time.

*Lilburne.* Will you spend all day in vain repetitions? You would not give one leave to breathe, nor freely to speak truth, without interruption, although you were laying load upon me for five hours together: I pray, Sir, do not now go about to tire the jury with tedious repetitions, nor to sophisticate or adulterate their understandings with your falsehoods and untruths.

*Justice Jermin.* Mr. Lilburne, the law of the land is, that the counsel for the state must speak last.

*Lilburne.* Sir, your law is according to the law of God, you said; and that law, I am sure, will have no man to bear false witness: why doth Mr. Prideaux tell the jury such falsehoods as he doth, and take up six times more time to take away my life, than you or he will allow me to defend it?

*Mr. Attorney.* For the "Salva," that it was delivered in the Tower, which is not in London, I hear not one witness to prove that.

*Lilburne.* That is a disputable point in law, whether it be in London or Middlesex.

*Mr. Attorney.* And then, my lord, as for the "Agreement of the People," Mr. Lilburne says, it was dated 1st May, 1649, and it was before the act was made that is dated May 1649, and it is before the law was made in July, 1649. We do not question him for that; but when he comes to bring in those books in August last, then he does new publish that "Agreement of the People:" he incites them to set it up as their centre, standard and banner.

*Lilburne.* Let me not thus be abused; that book was never fixed upon me, I was never taxed to be the author of it, or so much as the dispenser of one of them; what baseness is this in you, Mr. Prideaux, thus falsely to use me?

*Lord Kebble.* He does you no wrong, but all the fair play that can be; he doth fix that

"Agreement" no otherwise upon you, than by your books it is.

*Mr. Attorney.* I do acknowledge the "Agreement of the People" that you are charged with, is dated the 1st of May, 1649, and that the evidence may allow this; as also, that the "Agreement of the People" that was then published, and which you in your books did own, was and is signed by Mr. Walwin, Mr. Prince, and Mr. Overton, your fellow-prisoners, as well as yourself.

*Lilburne.* There is no book yet proved mine; and if that "Agreement" were mine, yet it is dated before both your acts, and was in print before they had a being; and therefore in the eye of your own law, can be no transgression; and you yourself do not so much as accuse me for publishing or dispersing one of them, since your acts were publicly declared.

*Mr. Attorney.* That which you owned and signed, Mr. Lilburne.

*Lilburne.* By your favour, Sir, I never owned or signed any book that is proved against me yet; and no book in the eye of the law can be accounted mine, until it be legally proved mine, or voluntarily confessed to be mine by myself.

*Mr. Attorney.* My lord, that is owned to be so printed. When he must come and incite the people, and stir them up from those particulars therein contained, to insist with particulars, as the dissolving of the parliament, the having of a new, and such other particulars therein contained; and that this "Agreement" shall be the center, the banner, and the waved standard, unto which they shall flock, and to send agents into several countries to put this into execution. Now, my lords, for this book, it is not doubted but that there are two witnesses that the "Preparative to the Hue and Cry" was owned by Mr. Lilburne to be his own, the erratas of the printer only excepted; and that the lieutenant of the Tower likewise joins in it. My lords, I think there was not a clause read to you out of it, but what is full and home to the purpose: and as for the "Out-cry," the printer's testimony is complete. And "The legal fundamentall Liberties" is owned by him in his "Impeachment of High-Treason against lieut. gen. Cromwell, and his son-in-law commissary Ireton;" and he doth there also sufficiently own the "Agreement" of the first of May: and, my lords, do not know there was any thing that was offered here in that book, but was first proved in the court. We do not offer any thing of error that was past, to take Mr. Lilburne upon any speeches that fell from him unawares, although he hath sufficiently done it: but in much speaking there wants not offence: it falls out here in this. Mr. Lilburne hath been very free in his writing, in his speaking, in his printing, and it now riseth in judgment against him, and the law must now give him his due; which you, my lords, are sole judges of, and from whom the jury and the prisoner both must receive it, for all that which Mr. Lilburne hath said to the

contrary. And the jury answers to the matter of fact, and they are upon their oaths sworn to do the things that are just and right. My lords, I shall leave the evidence to them, with this note or observation upon it : that notwithstanding all Mr. Lilburne hath flourished and said, I will not say as he hath done, and seek by glossing speeches or insinuations to wind into the affections of the jury, as he cunningly and smoothly hath done, by calling them his fellow citizens, and the like. You Gentlemen of the Jury, you are to answer now according to your own consciences, betwixt God and you ; your oath is, that you are not to respect favour or affection, nor to meddle with him upon any respect, than in justice, and as it is already clearly witnessed and proved before you. My lords, you have heard the several charges he is accused upon, you have heard a great deal of foul matter and dirt, that is fit for nothing but to be cast upon the ground, and returns to Mr. Lilburne again ; for truly when he casts it upon the purest marble or brass, it falls off again : God be thanked that it returns to Mr. Lilburne, the right owner ! The prisoner hath cast these accusations and these blemishes upon others, but now they are upon the ground they will fall off, and do retort and return upon his own face : he hath taken a great deal of pains to dig deep for mistakes, nay, for notorious and gross calumniation ; had he the ingenuity to remember the words of the Scripture, ‘ That the pit he hath digged for others, he is fallen into himself,’ he would have some remorse of conscience in him : but all the mischiefs and all the evils that can be thought upon, which he imagined to heap upon others, is now most justly fallen upon himself. It is said of those flies whose matter is corruption, they always light upon sore places, upon galled backs, upon carrion ; other birds, when they fly upon fair meadows, will not touch these. Certainly the parliament of England, the army, all the officers of it (whose face, both as parliament and army, all men know in an extraordinary manner), are now put in a balance against Mr. Lilburne : but for the army and the officers of it, no man can say but they have been faithful and true to their trust, gallant and courageous, and extreme successful to the peace and happiness of this nation ; and God is pleased at this instant to own them, and bless them in a miraculous manner.

*Lilburne.* And yet notwithstanding, did not you help to vote them traitors once ? I am sure I was in a chamber in Whitehall last year, when their commissioners (now members of your house) put your name down in their black bill for a malignant : but it seems you have recanted your errors, and engaged to be a good acquiescing creature, or else you had not been here this day in the condition you are in. But for all their faithfulness, &c. have they not rebelled twice against their creators, lords and masters ?

*Mr. Attorney.* Never army hath done greater things, and yet they have not escaped Mr. Lilburne’s tongue and pen ; they have not es-

caped it, my lords, but he hath lashed them to the purpose. I shall be as good as my word, not to aggravate the offences, for they are so vile, they aggravate themselves enough ; and therefore I leave it thus, the naked truth, and the worth of it, as the books themselves have offered themselves. But I shall say thus much more : The honour of the parliament of England, all the magistracy therein, the honour of the government, the honour and renown of the army, that hath done such great and wonderful things, is now at stake against Mr. Lilburne ; and there being a law published, that did give warning ; and Mr. Lilburne had been tried for his life sooner, upon my knowledge ; I say, Mr. Lilburne had been sooner tried, and sooner condemned and executed, if the law had been sooner made and published. But as he saith right well, ‘ Where there is no law, there is no transgression ;’ and therefore there being a law against which he hath offended, he must smart for it.

*Lilburne.* I am sure I was imprisoned most unjustly, without any the least shadow or colour in law, many months before your acts were made, and extremely oppressed ; and now you go about to hang me as a traitor, for at most but crying out of your oppression. O unrighteous men ! The Lord in mercy look upon me, and deliver me and every honest man from you, the vilest of men !

*Mr. Attorney.* And that law was published and proclaimed in this city, by means of which, Mr. Lilburne and others had timely notice that they should not do such things as are there forbidden ; it is also told them the penalties of it, which are those that are due for the highest high-treason : and yet notwithstanding you see with what boldness, with what conscience, in despite of all law and authority, these books have been made and published by Mr. Lilburne. And whereas he is pleased to say many times, that many men have petitioned for him to the parliament, he will not affirm to you that ever he petitioned himself ; but in all his discourse here, he calls them “ the present Men in Power, the gentlemen at Westminster ;” nay, my lord, he hath not so much as owned the power of the court since he came before you, but hath often called you cyphers, and the like.

*Lilburne.* That is no Treason, Sir : they intitle themselves “ the present power ;” and would you hang me for not giving them a better style, than they themselves give to themselves ? I think the style of “ present power or present government,” is a very fit style for them.

*Mr. Attorney.* My lord, I have told you long, it is the Jury that are judges upon the fact ; and to you I must appeal for law, if you do believe the evidence is plain and full against him, for which he stands indicted ; and so God direct all your judgments ! I have done.

*Lilburne.* Sir, by your favour, I shall desire to address myself in one word to you ; which is, to desire that the jury may read the first chapter of queen Mary, in the statute-book, and the last clause of the chapter of the 13th

of Elizabeth; where they shall clearly see, especially in the statute of queen Mary, that they abhorred and detested the making of words or writing to be treason; which is such a bondage and snare, that no man knows how to say or do, or behave himself, as is excellently declared by the statute of Hen. 4, v. 2. I have done, Sir.

Lord *Kettle*. Gentlemen, you of the Jury, you are sworn; you are men of conscience, gravity and understanding: To tell you of the duties of your place, that have gone through it so often, is a vain thing. The sacredness of an oath, which a man must not transgress in the least, not to save the world: you have gone so often through it, and understand it, that I need say no more. The Charge you have heard, and the Proofs; but for proof single, or double or treble, as some of them do amount unto a witness in this, yea, that doth double another man's witness; if I swear this thing, and another swear the same, a third the same, that is doubled upon all their testimonies. Mr. Lilburne hath cited two statutes of Edward the 6th, to prove there must be two witnesses\*; but I must tell him, were there but one to each fact, it were enough in law†; for as for that which was cited of king Edward the 6th, you have had it fully answered by a latter law of queen Mary, which doth over-rule that, and also enacts that the common law of England shall be the rule by which all treasons shall be tried; which reacheth to this case too, that there need no more but one witness, and this is law‡; and therefore, gentlemen of the jury, that must not stick with you. That which you have heard, to concern you of the truth of the matters, is this: You are not bound affirmatively to have two witnesses, but if that one witness with the circumstances concurs, that is sufficient: That which should prevail with you, is to consider the strength of the accusation, which rests in the books, and doth consist of three heads, which are laid down in the books themselves; which doth in the first place so firmly express,

\* Of the statutes requiring two witnesses, and the construction had upon them, see *East's Pleas of the Crown*, ch. 2, s. 63, 64, 65. *Edrr*

† *East's P. C.* ch. 2, s. 65. *Love's Case*, A. D. 1651, *post.* *Case of the Regicides*, A. D. 1660, *post.* *Lord Stafford's Case*, A. D. 1680, *post.* *Lord Shaftesbury's Case*, A. D. 1681, *post.* *Lord Russel's Case*, A. D. 1683, *post.* *Case of Ireland, Pickering, and Grove*, A. D. 1678, *post.* *Hawles's Remarks on Algernon Sidney's Trial*, *post.* *Parkins's Case*, A. D. 1695, *post.* *Lowick's Case* A. D. 1696, *post.* *EDIT.*

‡ It has long been settled otherwise. See *lord Castlemaine's Case*, A. D. 1680, *infra*. *Lord Shaftesbury's Case*, A. D. 1681, *Parkins's Case*, 1695, *Lowick's Case*, A. D. 1696, *infra*. *East's P. C.* ch. 2. s. 65, (where however the references to 3 St. Tr. 415, 645, 738, seem to be erroneous.) But as to any direct attempt against the king's person, one witness is sufficient by Stat. 40 G. 3. c. 93. *EDIT.*

and so far vilify the parliament and state, as it is now established in England; the second doth look unto the counsels and incitations of him for the stirring up of tumults, commotions, and wars in this nation; and the third, are the things cited in his books to that end and purpose, to divide the army, and then the other will take the better effect. These are the three main charges, and these the books that come from him do so plainly testify: that the books are proved to be his, you are fit judges of; but it clearly appears by those his books, that these things were in his intention.—For that he says, it is *Mens* that does make a man guilty, the mind, that is intended as it is expressed: '*Actus non facit reum, nisi Mens sit rea.*' Now that mind is *rea*, when there is faith published; but I tell you this, these books being admitted true, I say that never man that acted the highest of treasons, as he hath done, hath had so much liberty as he hath had: and as I said before, never man of his condition, nor any condition in England, that was indicted in such a case, ever had a trial in such a court, in such an auditory, such a presence, as he had.

*Lilburne*. The more's my sorrow.

Lord *Kettle*. The more's your sorrow, indeed! You have good cause to be sorrowful indeed for this act of yours thus declared: if your intentions had taken effect, your plot was the greatest that ever England saw, for it struck at no less than the subversion of this Commonwealth, of this state, to have laid and put us all in blood; your plot was such, that never such was seen in the world before to proceed from a private man as you are; therefore it must needs be heavy upon your conscience. Therefore, my masters of the jury, look into your conscience, and see what that saith unto you, which he stands so much upon: The Witnesses testimonies are now plain and good in law, in this cause they are multiplied; I do not know in one particular that there is a testimony single, but it is aggravated with many circumstances: therefore let not that trouble you, you are the proper judges of the matter of fact, being of the country; and if you have fully apprehended the dangerous things plotted in those books of Mr. Lilburne's, you will clearly find that never was the like treason hatched in England. And so in God's name, as the prisoner doth lead to your consciences, so go and do.

*Lilburne*. I desire your favour, that there may be a course taken, that neither my prosecutors, nor any belonging to them, may have access unto the Jury till they have done.

Justice *Jermin*. You Gentlemen of the Jury, I did expect it, it was expected by the Court, that some matter of law, or some question of law, might arise upon the evidence; which if it had, it was the duty of the Court to have cleared it; but there does not appear, and therefore there is an end, as to the dispute of the law.

*Foreman*. We are no lawyers indeed, my lord.

*Lilburne*. I have begged it, and you have promised it, that I should have liberty to plead

in law to the illegalities of the Indictment; but you have denied me that legal right: yea, you will not permit my Solicitor to speak a few words for me. I dare undertake there was never such a Trial upon English ground as this hath been; where a man hath been denied all the legal rights of an Englishman, as I have been. You Gentlemen of the Jury, who now are my sole judges, I pray you take notice of it.

Justice *Jermin*. There never was any such kind of abuse offered to a Court as you have given, nor never was such language used to any Court of Justice before, that I did hear of, as you have given: and certainly the behaviour at the bar doth set forth what the humours and character of the man is; for in this case, if any such dangerous thing of acting of commotion or mutiny in the army or in the nation should have followed, it had been too late then to have thought of the remedy. Therefore the wisdom of the parliament hath declared, That whosoever shall by writing, printing, or by openly declaring, publish that the present government of England is usurped or tyrannical, it is treason. There is the fact, upon which all the evidence does depend; and you are to judge, whether in all those books there be not by Mr. Lilburne a traitorous fact committed; and how clearly this does appear unto you, with all circumstances thereunto belonging, I leave you to judge: and how short his pretended replies are to be seen, or invalidate the strength of the witnesses, I also leave you to judge. I say, I might easily shew you, how short his pretended answers are of real satisfaction, but I leave it to your judgments.

Lilburne. Sir, my Answers are real Answers, not pretended ones, as you are pleased to call them.

Justice *Jermin*. But in this business the evidences are sufficient to make a man guilty of treason; for here was not simply a passionate act, or inconsiderate speech, but what he hath done, he hath done deliberately and advisedly, which is sufficient to make him, or any man that so doth, guilty of treason. All this that was published was in August, the act is in July preceding. Now it is very true, and I will English it for Mr. Lilburne, 'Actus non facit reum, nisi Mens rea.' The act of a man does not make him guilty, unless his mind be guilty. But I pray, how shall any man know the guilt of a man's mind, but by those polluting and poisonous words that come out of his mouth? That's the mind. What I hear a man say, I may lawfully say he thinks: and it is a rule in law, that the outward acts do shew forth inward intentions: that very rule I will not speak it in Latin, because I speak to one that does say he does not understand Latin, otherwise I could speak more Latin. Now here is the matter, whether or no, upon the whole evidence that you have heard, there does not appear sufficient matter to make this prisoner guilty, not of rash, but of advised and deliberate treason; and as plainly of plotting and contriving to raise mutiny and sedition in the army, thereby totally to

subvert and destroy the present government: and truly, I have not heard more of skill has been used, and more attempts made, than I think you have heard, and do remember. I doubt not, but as you will take care of the life of a man, that you must not take away the life of an innocent; so will you be as careful of your own souls, and the public safety, and that's all that I desire, and I pray God to direct you for the best.

Lilburne. If you will not let me have counsel, let my solicitor speak matter of law for me.

Justice *Jermin*. Mr. Attorney, you must take some care to suppress this, he will not be answered by us. I pray demand justice of the Court against him.

Lilburne. Well, Sir, then I have done.

[The Foreman desires the Act for Treason, and one of the Jury desired to drink a cup of sack, for they had sat long, and how much longer the debate of the business might last, he knew not; and therefore desired, that they might have amongst them a quart of sack to refresh them.]

Justice *Jermin*. Gentlemen of the Jury, I know, for my part, in ordinary juries that they have been permitted to drink before they went from the bar; but in case of Felony or Treason, I never so much as heard it so, or so much as asked for; and therefore you cannot have it.

[But one of the Judges moved they might have it.]

Justice *Jermin*. I may not give leave to have my conscience to err; I dare not. And thus if the rest of the Judges be of opinion, you shall have a light if you please, the fellow that keeps you shall help you to it; but for sack, you can have none, and therefore withdraw about your work.

Lilburne. Sir, I understand, the officer that is to keep their door hath declared something of bitterness of spirit against me; I desire therefore he may have some indifferent man joined with him, to see I have fair play; which was granted, and he sworn.

The Jury go forth about five o'clock, the Court adjourned till six o'clock, and the Court commands the Lieutenant of the Tower and the Sheriffs to carry the Prisoner into the Irish Chamber, which they did. The Prisoner stays about three quarters of an hour, and the Jury being come into the Court again, the Prisoner was sent for; and after the Crier had caused silence, the Jury's names were called, viz.

- |                     |                    |
|---------------------|--------------------|
| 1. Miles Petty,     | 7. Edmond Keymer,  |
| 2. Stephen Iles,    | 8. Edward Perkins, |
| 3. Abraham Smith,   | 9. Ralph Packman,  |
| 4. John King,       | 10. Wm. Commens,   |
| 5. Nicholas Murren, | 11. Simon Werdon,  |
| 6. Thomas Dainty,   | 12. Henry Tooley,  |

Clerk. Are you agreed of your Verdict?

Jury. Yes.

Clerk. Who shall speak for you?

Jury. Our Foreman.

Crier. John Lilburne, hold up thy hand,

What say you, (look upon the Prisoner) is he guilty of the Treasons charged upon him, or any of them, or Not Guilty?

*Foreman.* Not Guilty of all of them.

*Clerk.* Nor of all the Treasons, or any of them that are laid to his Charge.

*Foreman.* Not of all, nor of any one of them.

*Clerk.* Did he fly for the same?

*Foreman.* No.

[Which No being pronounced with a loud voice, immediately the whole multitude of people in the Hall, for joy of the Prisoner's acquittal, gave such a loud and unanimous shout, as is believed was never heard in Guildhall, which lasted for about half an hour without intermission; which made the Judges for fear turn pale, and hang down their heads; but the Prisoner stood silent at the bar, rather more sad in his countenance than he was before. But silence being made:]

*Clerk.* Then hearken to your Verdict, the Court hath heard it: You say, that John Lilburne is Not Guilty of all the Treasons laid unto his charge, nor of any one of them; and so you say all, and that he did not fly for it?

*Jury.* Yes, we do so.

*Clerk.* Gentlemen of the Grand Inquest, the Court doth discharge you. And you gentlemen of life and death, the Court doth discharge you also. Lieutenant of the Tower, you are to carry your Prisoner to the Tower again, and major general Skippon is to guard you: and all whom you desire, are to assist you.

The Prisoner withdraws, and the Court adjourned till Wednesday following.

Extraordinary were the acclamations for the Prisoner's deliverance, as the like hath not been seen in England; which acclamations and loud rejoicing expressions went quite through the streets with him to the very gates of the Tower, and for joy the people caused that night abundance of bonfires to be made all up and down the streets. And yet for all his acquittal by the law, his adversaries kept him afterwards so long in prison, that the people wondered, and began to grumble that he was not discharged; and divers of his friends went to the Judges, the Parliament, and Council of State, by whose importunities, by the seasonable help of the lord Gray of Grooby, colonel Ludlow, Mr. Robinson, and colonel Martin, his Discharge was procured, a Copy of which thus followeth:

'Whereas Lieut. Colonel John Lilburne hath been committed Prisoner to the Tower, upon suspicion of High Treason, in order to his Trial at law; which Trial he hath received, and is thereby acquitted: These are therefore to will and require you, upon sight hereof, to discharge and set at liberty the said Lieutenant Colonel John Lilburne from his imprisonment; for which this shall be your sufficient Warrant. Given at the Council of State, at Whitehall, this 8th day of November, 1649.—Signed in the Name and by the Order

'of the Council of State, appointed by Authority of Parliament.

'JOHN BRADSHAW, President†

'To the Lieutenant of the Tower of London, or to his Deputy.'

† The following passages relative to this Case, are extracted from the second part of Clement Walker's "History of Independency:"  
'About this time John Lilburne and his company, set forth a book called "The Picture of the Council of State," &c. wherein they set forth the illegal and violent proceedings of the said Council against them in seizing upon them with armed bands of soldiers, and interrogating them against themselves, &c. where they have these words, "The faction of a traitorous party of officers of the army hath twice rebelled against the Parliament, and broke them in pieces, and by force of arms culled out whom they pleased, and imprisoned divers of them, and laid nothing to their charge; and have left only in a manner a few men (besides eleven of themselves, viz. the general Cromwell, Ireton, Harrison, Fleetwood, Rich, Inglosby, Haslerig, Constable, Fennick, Walton, and Allen, treasurer,) of their own faction behind them, that will, like spaniel dogs, serve their lusts and wills; yea, some of the chiefest of them, viz. Ireton, Harrison, &c. yea, Mr. Holland himself styled them a Mock-Parliament, a Mock-Power at Windsor; yea, it is yet their expressions at London."

"April 2, 1649. A Petition subscribed by divers persons in behalf of John Lilburne and his company, was presented to the Commons, wherein, amongst other things, are contained these three just demands:

"1. That no man be censured, condemned, or molested, but for the breach of some law first made and published to the people, whereby is avoided that uncertainty and hourly hazard that otherwise every man is subject to, both in respect of his estate, liberty and life.

"2. That every crime have not only its penalty annexed, but together therewith the manner and method of proceedings ascertained.

"3. That the execution of laws be referred to ordinary magistrates and officers by law deputed thereto, and that the military power be not used, but where the civil is so resisted, as that of its own strength it is deficient to enforce obedience."

"About this time Mr. Robert Lockier, and five or six other troopers of captain Savage's troop, were condemned for a supposed mutiny; in behalf of whom lieut. col. John Lilburne writ this letter following to the General, dated April 27, 1649.

"May it please your Excellency: We have not yet forgot your solemn engagement of June 5, 1647, whereby the army's continuance as an army was in no wise by the will of the state, but by their own mutual Agreement: And if their standing were removed from one

'foundation to another, as is undeniable, then  
'with the same they removed from one author-  
'ity to another; and the ligaments and bonds  
'of the first were dissolved, and gave place to  
'the second; and under, and from the head  
'of their first station, viz. By the will of the  
'state, the army derived their government by  
'martial law; which in judgment and reason  
'could be no longer binding than the authority  
'(which gave being thereto) was binding to the  
'army: For the denial of the authority, is an  
'abrogation and nullment of all acts, orders or  
'ordinaunces by that authority as to them:  
'And upon this account your Excellency with  
'the army, long proceeded upon the constitu-  
'tion of a new council and government, con-  
'trary to all martial law and discipline, by  
'whom only the army engaged to be ordered  
'in their prosecution of the ends; to wit, Their  
'several rights, both as soldiers and com-  
'moners, for which they associated; declaring,  
'agreeing, and promising each other, not to  
'disband, divide, or suffer themselves to be dis-  
'banded or divided, without satisfaction and  
'security in relation to their grievances and de-  
'sires in behalf of themselves and the common-  
'wealth, as should be agreed unto by their  
'council of agitators: And by virtue and under  
'colour of this establishment, all the extraordi-  
'nary actions by your Excellency, your officers  
'and the army have past: Your refusal to dis-  
'band, disputing the orders of parliament:  
'Impeachment and ejection of Eleven Mem-  
'bers; your first and second march up to Lon-  
'don; your late violent exclusion of the major  
'part of members out of the house, and their  
'imprisonment without cause, &c. which can  
'no way be justified from the guilt of the  
'highest Treason, but in the accomplishment  
'of a righteous end, viz. the enjoyment of the  
'benefit of our laws and liberties which we  
'hoped long ere this to have enjoyed from  
'your hands: Yet when we consider, and here-  
'with compare many of your late carriages  
'both towards the soldiery and other free peo-  
'ple, and principally your cruel exercise of  
'martial law, even to the sentence and execu-  
'tion of death upon such of your soldiers as  
'stand for the rights of that Engagement, &c.  
'And not only so, but against others not of the  
'army; we cannot but look upon your defec-  
'tion and apostacy in such dealings, as of most  
'dangerous consequence to all the laws and  
'freedoms of the people.

"And therefore, although there had never  
'been any such solemn Engagement by the  
'army, as that of June 5, 1647, which with  
'your Excellency in point of duty ought not to  
'be of the meanest obligation. We do protest  
'against your exercise of martial law, against  
'any whomsoever, in times of peace; where  
'all courts of justice are open, as the greatest  
'encroachment upon our laws and liberties  
'that can be acted against us, and particularly  
'against the trial of the soldiers of captain Sa-  
'vage's troop yesterday, by a court martial,  
'upon the Articles of War, and sentencing of

'two of them to death, and for no other end,  
'as we understand, but for some dispute about  
'their pay: And the reason of this our Protes-  
'tation is from the Petition of Right, made in  
'the third year of the late king, which declareth,  
'That no person ought to be judged by law  
'martial, except in times of war; and that  
'all commissions given to execute martial law  
'in time of peace, are contrary to the laws  
'and statutes of the land.' And it was the  
'Parliament's complaint; That martial law  
'was then commanded to be executed upon  
'soldiers for robbery, mutiny, or murder.  
'Which Petition of Right this present parlia-  
'ment in their late Declarations of the 9th of  
'February, and the 17th of March, 1648, com-  
'mend as the most excellentest law in Eng-  
'land, and their promise to preserve invariably,  
'it, and all other the fundamental laws and li-  
'berties, concerning the preservation of the  
'lives, properties, and liberties of the people,  
'with all things incident thereunto. And the  
'exercise of martial law in Ireland, in time of  
'peace, was one of the chiefest articles for  
'which the earl of Strafford lost his head: the  
'same by this present parliament being judged  
'High Treason. And the Parliament itself,  
'neither by act nor ordinance, can justly or  
'warrantably destroy the fundamental liberties  
'and principles of the common law of Eng-  
'land: It being a maxim in law and reason  
'both, that all such acts or ordinaunces are *ipso*  
'*facto*, null and void in law, and binds not all,  
'but ought to be resisted and stood against to  
'the death. And if the supreme authority  
'may not presume to do this, much less may  
'you, or your officers presume thereupon; For  
'where remedy may be had by an ordinary  
'course in law, the party grieved shall never  
'have his recourse to extraordinaries. Whence  
'it is evident, That it is the undoubted right  
'of every Englishman, soldier or other, that he  
'should be punishable only in the ordinary  
'courts of justice, according to the laws and  
'statutes of the realm in the times of peace, as  
'now it is; and the extraordinary way by  
'courts martial in no wise to be used.

'Yea, the parliament's oracle, Sir Edward  
'Coke declares in the third part of his Institutes,  
'chap. of Murder, That for a general or other  
'officers of an army, in time of peace, to put any  
'man although a Soldier, to death, by colour of  
'Martial law, it is absolute murder in that gene-  
'ral, &c. Therefore erecting of martial law now  
'when all courts of justice are open, and stop-  
'ping the free current of law, which sufficiently  
'provides for the punishment of soldiers as well  
'as others, as appears by 18 H. 2, 6, c. 19. 2 & 3  
'E. 6, c. 2. 4 and 5 P. and M. c. 3, and 5 El. 5  
'and 5 Jam. 25, is an absolute destroying of our  
'fundamental liberties, and the raising of the  
'foundation of the common law of England;  
'the which out of duty and conscience to the  
'rights and freedoms of the nation (which we  
'value above our lives), and to leave you and  
'your council without all excuse, we were mo-  
'ved to represent unto your excellency, earnest-

‘by pressing you well to consider what you do, before you proceed to the taking away the lives of those men by martial law; lest the blood of the innocent (and so palpable subversion of the laws and liberties of England), bring the reward of just vengeance after it upon you, as it did upon the earl of Strafford: For innocent blood God will not pardon: and what the people may do (in case of such violent subversion of their rights) we shall leave to your excellency to judge, and remain, Sir, Your Excellency’s humble Servants,

JOHN LILBURNE, RICH. OVERTON.

‘From our cautelous, and onjust and  
‘tyrannical Captivity in the Tower  
‘of London, April 27, 1649.’

“Notwithstanding which letter, and much other means made, the said Lockier was shot to death in Saint Paul’s Church-yard the same day, to strike a terror and slavish fear into such other soldiers as shall dare to take notice of their approaching slavery; but his Christian and gallant deportment at his death, with the honourable funeral pomp accompanying him to his grave, turned all the terror of his tragedy into hatred and contempt of the authors thereof.”—(Walker, part ii, p. 161—4.)

“About this timesome thousands of well-affected women of London, Westminster, Southwark, and the Hamlets, stormed the house of commons with two Petitions in behalf of Jo. Lilburne and his company: They complain of the Council of State’s violent and illegal proceedings against them, in seizing them in the night by soldiers; of Lockier’s being shot to death by martial Law; of their arbitrary government, taxes, excise, monopolies, &c. That there was a design to fetch Lilburne and his fellow prisoners out of the Tower at midnight to White-hall, and there murder them; That the house by declaring the abettors of the book laid to those prisoners charge, Traitors, have laid a snare for people; when as hardly any discourse can be touching the affairs of the present times but falls within the compass of that book; so that all liberty of discourse is thereby utterly taken away, than which there can be no greater slavery.

“They received not so good answers to these Petitions as they were wont to receive, when they had money, plate, rings, bodkins, and chinbees to sacrifice to these legislative idols, they were bid ‘Go home and wash their dishes;’ to which some replied, ‘They had neither dishes nor meat left.’

“Note that the commons have returned answer to some petitioners, that Lilburne shall be legally tried by laws preceding the fact; and yet by their Order, 11 April, 1649, it is ordered, That the attorney general be required to take speedy course for prosecution of lieutenant John Lilburne, &c. in the Upper Bench this term, upon the declaration of this house, touching the book, entitled, “The second part of England’s new chains discovered.” If this or-

der be not a law, and preceding the fact too, then our supreme saints have told a legislative lie.”—(Ibid, p. 165, 166.)

“May 6, 1649. The honest Levellers of the Army (for that is the nick-name which Cromwell falsely and unchristianly hath christened them withal) enemies to arbitrary government, tyranny and oppression, whether they find it in the government of one or many? whether in a council of officers, a council of state, or a fag end of a house of commons? whether it vail itself with the title of a supreme authority, or a legislative power?) drew together to a rendezvous about Banbury in Oxfordshire, to the number of 4,000 or 5,000, others resorting to them daily from other parts. This gave an alarm to our grandees, fearing the downfall of their domination. Cromwell (not knowing what party to draw out against them, that would be stedfast to him) shunned the danger, and put his property the general upon it to oppose the rendezvous, and (looking as wan as the gulls of a sick turkey-cock) marched forth himself Westward, to intercept such as drew to the rendezvous. In the mean time the said Levellers printed and published this ensuing Paper, entitled,

#### ENGLAND’S STANDARD ADVANCED:

Or, A Declaration from Mr. William Thomson, and the oppressed People of this Nation, now under his conduct in Oxfordshire. Dated at their Rendezvous, May 6, 1649.

“Whereas it is notorious to the whole world, that neither the faith of the parliament, nor yet the faith of the army formerly made to the people of this nation in behalf of their common right, freedom, and safety, hath been at all observed, or made good, but both absolutely declined and broken, and the people only served with bare words and fair promising papers, and left utterly destitute of all help or delivery: and that this hath principally been by the prevalency and treachery of some eminent persons, now domineering over the people, is most evident. The solemn Engagement of the army at New-market and Triplo-heaths by them destroyed, the Council of Agitators dissolved, the blood of warshed in time of peace, petitioners for common freedom suppressed by force of arms, and petitioners abused and terrified, the lawful trial by 12 sworn men of the neighbourhood subverted and denied, bloody and tyrannical courts, called an High Court of Justice, and a Council of State, erected, the power of the sword advanced and set in the seat of the magistrates, the civil laws stopt and subverted, and the military introduced, even to the hostile seizure, imprisonment, trial, sentence, and execution of death, upon divers of the free people of this nation; leaving no visible authority, devolving all into a factious Juncto and Council of State, usurping and assuming the name, stamp, and authority of Parliament, to oppress, torment and vex the people,

whereby all the lives, liberties and estates, are all subdued to the wills of those men, no law, no justice, no right or freedom, no ease of grievances, no removal of unjust barbarous taxes, no regard to the cries and groans of the poor to be had, while utter beggary and famine, like a mighty torrent, hath broken in upon us, and already seized upon several parts of the nation.

"Wherefore through an unavoidable necessity, no other means left under heaven, we are enforced to betake ourselves to the law of nature, to defend and preserve ourselves and native rights, and therefore are resolved as one man (even to the hazard and expence of our lives and fortunes) to endeavour the redemption of the magistracy of England, from under the force of the sword, to vindicate the Petition of Right, to set the unjustly imprisoned free, to relieve the poor, and settle this commonwealth, upon the grounds of common right, freedom, and safety.

"Be it therefore known to all the free people of England, and to the whole world, that (chusing rather to die for freedom, than live as slaves) we are gathered and associated together upon the bare account of Englishmen, with our swords in our hands to redeem ourselves and the land of our nativity, from slavery and oppression, to avenge the blood of war shed in the time of peace, to have justice for the blood of Mr. Arnold, shot to death at Ware, and for the blood of Mr. Robert Lockier, and divers others who of late by martial law were murdered at London.

"And upon this our engagement in behalf of the commonwealth, we do solemnly agree and protest, that we will faithfully, laying all self-respects aside, endeavour the actual relief and settlement of this distressed nation.

"And that all the world may know particularly what we intend, and wherein particularly to centre and acquiesce for ever, not to recede or exceed the least punctilio. We do declare from the integrity of our hearts, that by the help and might of God we will endeavour the absolute settlement of this distracted nation, upon that form and method by way of an Agreement of the People, tendered as a peace-offering by lieut. col. John Lilburne, Mr. William Walwyn, Mr. Tho. Prince, and Mr. Richard Overton, bearing date May 1, 1649, the which we have annexed to this our Declaration as the standard of our engagement, thereby owning every part and particular of the premises of the Agreement, promising and resolving to the utmost hazard of our lives and abilities to pursue the speedy and full accomplishment thereof, and to our power, to protect and defend all such as shall assent or adhere thereunto; and particularly, for the preservation and deliverance of lieut. col. John Lilburne, Mr. William Walwyn, Mr. Tho. Prince, Mr. Richard Overton, capt. Bray, and Mr. William Sawyer, from their barbarous and illegal imprisonments: And we declare, that if a hair of their heads perish

in the hands of those tyrants that restrain them, that if God shall enable us, we will avenge it seventy times seven-fold, upon the heads of the tyrants themselves, and their creatures.

"And that till such time as by God's assistance we have procured to this nation the declared purpose of this our engagement, we will not divide nor disband, nor suffer ourselves to be divided or disbanded, resolving with soberness and civility to behave ourselves to the country, to wrong or abuse no man, to protect all to our power from violence and oppression in all places where we come; resolving to stop the payment of all taxes or assessments whatsoever, as of excise, tythes, and the tax of 90,000*l. per annum*.

"And having once obtained a new representative, according to the said Agreement, upon such terms and limitations therein expressed: we shall then freely lay down our arms, and return to our several habitations and callings.

"And concerning the equity, necessity, and justice of our undertaking, we appeal to the judgment of the oppressed betwixt their destroyers and us; whether by the law of God, of nature, and nations, it be not equally justifiable in us to engage for the safety and deliverance of this nation, as it was with the Netherlanders, and other people for theirs, and upon the same principles that the army engaged at Newmarket and Triploe-heaths; both parliament and army declaring, That it is no resistance of magistracy to side with just principles, and law of nature and nations: and that the soldiery may lawfully hold the hands of that general who will turn his cannon against his army, on purpose to destroy them; the seamen the hands of that pilot, who wilfully runs his ship upon a rock. And therefore (the condition of this commonwealth considered) we cannot see how it can be otherwise esteemed in us. And upon that account we declare, that we do own, and are resolved to own all such persons, either of the army or countries, that have already, or shall hereafter rise up and stand for the liberties of England, according to the said Agreement of the People: and in particular, we do own and avow the late proceedings in col. Scroop's, col. Harrison's, and major gen. Skippon's regiments, declared in their Resolutions published in print; as one man, resolving to live and die with them, in their and our just and mutual defence.

"And we do implore and invite all such as have any sense of the bonds and miseries upon the people; any bowels of compassion in them, any piety, justice, honour, or courage in their breasts, any affections to the freedoms of England, any love to his neighbour or native country, to rise up, and come in to help a distressed miserable nation, to break the bonds of cruelty, tyranny and oppression, and set the people free.

"In which service, trusting to the undoubted goodness of a just and righteous cause, we shall faithfully discharge the utmost of our endeavours; not sparing the venture of all hard-

ships and hazards whatsoever, and leave the success to God.

"Signed by me WILLIAM THOMPSON, at our Rendezvous in Oxfordshire near Banbury, in behalf of myself, and the rest engaged with me, May 6, 1649, for a new parliament; by the Agreement of the People."

"John Lilburne being ordered a close prisoner in the Tower by the commons, without pen, ink, or paper (which was tyranny under king Charles, but not under king Oliver) a Petition was presented to the commons by many well-affected, that John might have the allowance usually and legally due to prisoners in the like case for his support; which was rejected, inasmuch that John was kept three whole days with one half meal's meat; this is to condemn men unheard to be murdered by famine in their private slaughter-houses, when they cannot, or dare not murder them in their pretended courts of judicature, or public shambles: yet afterwards, when the drawing together of the Levellers and Discontents of Newcastle affrighted the commons, they voted him the short allowance of 30s. a week.

"John Lilburne being a close prisoner in the Tower, as hath been said, Hugh Peters, chaplain in ordinary to two great potentates, Lucifer and Oliver, came about dinner-time (May 25, 1649,) to visit him; and though admittance be denied to other men, yet to him the gates flew open: as sure as St. Peter keeps the keys of heaven, Hugh Peters keeps the keys of our hell and our grandees consciences, and openeth and shutteth at pleasure: he is confessor at Tyburn, and hath a great power over damned spirits, or rather over such spirits, as not submitting basely to the tyranny of our State-Mountebanks, incur their condemnation in this world, by God's permission, in order to their salvation in the next world; the tyranny of these usurpers implying at once, their cruelties over our bodies, and God's mercy to our souls. Hugh's first salute was, That he came merely to give John a visit, without any design (his guilty conscience prompting him to a voluntary apology.) John answered, I know you well enough, you are one of the setting dogs of the great men of the army, with fair and plausible pretences to insinuate into men, when they have done them wrong, and to work out their designs when they are in a strait, and cover over the blots that they have made. Then John complained of the \* illegal and violent seizing upon him by soldiers, and carrying him

before that new erected thing, called "A Council of State," who committed him without any accuser, accusation, prosecutor or witness, or any due process of law; and yet when the king impeached the five members, and preferred a charge of high-treason against them; (Recorded 1 Par. Book of Decl. p. 35.) and only failed in a single pönitilio of due process of law, they cried out, it was an invasion of the people's liberties; so that four or five recantations from him, recorded in their own declarations, would not serve his turn. Peters, half out of countenance, if so prostituted a villain that practises impudence amongst common whores, and whose pulpit is more shameful than another man's pillory, can be out of countenance, takes up one of Coke's Institutions, and 'professed Lilburne was merely gulled in reading or trusting to those books, for there were no laws in England. John answered, he did believe him, for that his great masters, Cromwell, Fairfax, &c. had destroyed them all. Nay, quoth Hugh, there never were any in England; with that John shewed him the Petition of Right, asking him, whether that were law? which Peters had the impudence to deny, asking, what law was? John replied \* out of the parliament's own declarations. The law is that which puts a difference between good and evil; just and unjust: If you take away the law, all things will fall into confusion, every man will become a law unto himself, which in the depraved condition of human nature must needs produce great enormities; Lust will become a law, envy a law, covetousness and ambition will become laws; and what dictates, what decisions such laws will produce may easily be discerned. This, Mr. Peters, is a definition of law by the parliament in the days of their primitive purity, before they had corrupted themselves with the commonwealth's money. And elsewhere the law is called, The safeguard, the custody of all private interests, your honours, lives, liberties, and estates, are all in the keeping of the law, without this every man hath a like right to any thing; It is the best birth-right the subject hath; it is a miserable servitude or bondage where the law is uncertain, or unknown. To this the comic priest replied, I tell you, for all this, there is no law in this nation but the sword, and what it gives; neither was there any law or government in the world, but what the sword gave.† To this the honest lieutenant colonel answered, Mr. Peters, you are

\* Compare this act of the king's, with the violent act of those traitors and tyrants, Fairfax and his council of war, in imprisoning and secluding above 200 members at once without cause shewn, and leaving only 40 or 50 of their cheating faction in the house to carry on their bloody anarchical designs; some of which secured members with barbarous usage were almost brought to death, and their murder since attempted by soldiers.

\* The law is now taken away, and all things in confusion by turning out monarchy, without our consent, into a Free-State of slaves governed by tyrants.

† This doctrine of devils, that it is lawful to submit to any present power that is strongest, is broached in a pamphlet by old Rowse the illiterate Jew of Eton college. And by John Goodwin the sophistical divine; which is fully confuted in "A Religious Demurrer concerning Submission to the present Power;" an excellent piece.

one of the guides of the army, used by the chief leaders to trumpet their principles and tenets; and if your reasoning be good, then if six thieves meet three or four honest men and rob them, that act is righteous, because they are the stronger party. And if any power be a just power that is uppermost, I wonder how the army and parliament can acquit themselves of being rebels and traitors before God and man, in resisting and fighting against a just power in the king, who was a power up and visible, fenced about with abundance of laws, so reputed in the common acceptance of men: by the express letter of which all those that fought against him are, *ipso facto*, traitors; and if it were not for the preservation of our laws, and liberties, why did the parliament fight against him, a present power in being? and if there be no laws in England, nor never was, then you and your great masters, Cromwell, Fairfax, and the parliament, are a pack of bloody rogues and villains, to set the people to murder one another, in fighting for preservation of their laws, in which their liberties were included, which was the principal declared cause of the war from the beginning to the end. I thought (quoth the lieutenant colonel) I had been safe when I made the known laws the rules of my actions, which you have all sworn and declared to defend and make as the standard and touchstone between you and the people. I but (replied Hugh) I will shew that your safety lies not therein, their minds may change, and then where are you? I but (quoth the lieutenant colonel) I cannot take notice of what is in their minds to obey that; but the constant declaration of their minds, never contradicted in any of their declarations, as, that they will maintain the Petition of Right, and laws of the land, &c. This was the substance of their discourse, saying that John pinched upon his great masters large fingering of the common-wealth's money, calling it, theft and state-robbery, and saying, That Cromwell and Ireton pissed both in one quill, though they seem sometime to go one against another, yet it is but that they may the more easily carry on their main design, to enslave the people." (Ibid. p. 179—183.)

This relation is certainly curious, and may serve to illustrate the characters of Lilburne, Peters, and Walker himself, though it would be rash to vouch for the entire exact authenticity of it. It may be observed, that Hume, in quoting Walker as authority for the incredible and absurd computation,\* 'that the Parliament had in the first five years of the civil war levied on the people of England † the amount of forty millions;' (which computation however seems, Mr. Hume admits, much too

large,) 'yet were loaded with debts and imbrances,' says (ch. 49, note l.) that "Walker is an author of spirit and ingenuity, and being a zealous parliamentarian, his authority is good." But in truth Walker is a most passionate party writer, on whom but very little reliance can be safely placed. Mr. Hume omits to mention that when he wrote he had been secluded, and was become violently disgusted and exasperated against the parliament. That he would publish an assertion, which was not only false, but notoriously false, and the disproof of which was upon record, may be seen in the account of the treatment of King Charles during the interval between sentence and execution, &c.—In respect of candour, perhaps the best commendation which can be given of him, is that his extravagant vehemence and gross scurrility present sufficient warning to every impartial reader, against trusting to his representations.

Lord Clarendon, speaking of Cromwell and his first Parliament, says, that "A considerable part of the members utterly refused to sign the engagement," [of Fidelity to the Protector and against proposing or consenting to any alteration of the government,] "and called it a violation of the privilege of parliament, and an absolute depriving them of that freedom which was essential to it. So they were excluded, and restrained from entering into the house: and they who did subscribe it, and had thereupon liberty to sit there, were yet so refractory to any proposition that might settle him in the government in the manner he desired it, that, after the five months near spent in wrangling, and useless discourses (during which he was not to attempt the dissolution of them, by his instrument of government) he took the first opportunity to dissolve them; and upon the 22nd of January, with some reproaches, he let them know he could do the business without them; and so dismissed them with much evidence of his displeasure: and they again retired to their habitations, resolved to wait another opportunity of revenge, and in the mean time to give no evidence of their submitting to his usurpation, by undertaking any employment or office under his authority, he as carefully endeavouring and watching to find such an advantage against them, as might make them liable to the penalty of the laws. Yet even his weakness and impotency upon such a notorious advantage, appeared in two very notable instances, which happened about that time, in the case of two persons, whose names were then much taken notice of upon the stage of affairs, John Wildman, and John Lilburne.

"The former had been bred a scholar in the university of Cambridge; and being young, and of a pregnant wit, in the beginning of the rebellion meant to make his fortune in the war; and chose to depend upon Cromwell's countenance and advice, when he was not above the degree of a captain of a troop of horse himself, and was much esteemed and valued by him, and made an officer; and was so active an op-

\* What Walker says on the subject is as usual with him by way of direct positive general assertion, not of computation.

† See on this subject, sir John Sinclair's "History of the Public Revenue of Great Britain."

stirring and fomenting jealousies and discontents, and so dextrous in composing, or improving any discourses, and so inspired with the spirit of praying and preaching, when those gifts came into request, and became thriving arts, that about the time when the king was taken from Holmby, and it was necessary that the army should enter into contests with the parliament, John Wildman grew to be one of the principal agitators, and was most relied upon by Cromwell to infuse those things into the minds of the soldiers, and to conduct them in the managery of their discontents, as might most advance those designs he then had; and quickly got the reputation of a man of parts; and having a smooth pen, drew many of the papers which first kindled the fire between the parliament and the army, that was not afterwards extinguished but in the ruin of both. His reputation in those faculties made him quit the army; where he was become a major; and where he kept still a great interest, and betook himself to civil affairs, in the solicitation of suits depending in the parliament, or before committees; where he had much credit with those who had most power to do right or wrong, and so made himself necessary to those who had need of such protection from the tyranny of the time. By these arts he thrived, and got much more than he could have done in the army, and kept, and increased his credit there, by the interest he had in other places. When Cromwell declined the ways of establishing the commonwealth, Wildman, amongst the rest, forsook him; and entered, warily, into any counsels which were like to destroy him: and upon the dissolution of this last parliament, having less of phlegm, and so less patience than other men, to expect another opportunity, and in the mean time to leave him to establish his greatness, he did believe he should be able to make such a schism in the army, as would give an opportunity to other enraged persons to take vengeance upon him.

“Cromwell knew the man, and his undermining faculties; knew he had some design in hand, but could not make any such discovery as might warrant a public prosecution; but appointed some trusty spies (of which he had plenty) to watch him very narrowly, and, by being often with him, to find his papers; the spreading whereof, he knew, would be the preambles to any conspiracy of his. Shortly after the dissolution of that parliament, these instruments of Cromwell's surprised him in a room, where he thought he had been safe enough, as he was writing a declaration; and seized upon the papers; the title whereof was, ‘a Declaration, containing the reasons and motives which oblige us to take up arms against Oliver Cromwell;’ and though it was not finished, yet in that that was done, there was all venom imaginable expressed against him, and a large and bitter narration of all his foul breach of trust, and perjuries, enough to have exposed any man to the severest judgment of

that time; and as much as he could wish to discover against him, or any man whom he most desired to destroy. The issue was, the man was straightly imprisoned, and preparations made for his trial, and towards his execution, which all men expected. But, whether Cromwell found that there were more engaged with him than could be brought to justice, or were fit to be discovered (as many men believed) or that Wildman obliged himself for the time to come not only to be quiet, but to be a spy for him upon others (as others at that time suspected, and had reason for it afterwards) after a short time of imprisonment, the man was restored to his liberty; and resorted, with the same success and reputation, to his former course of life; in which he thrived very notably.

“The case of John Lilburne was much more wonderful, and administered more occasion of discourse and observation. This man, before the troubles, was a poor book-binder; and for procuring some seditious pamphlets against the church and state to be printed and dispersed, had been severely censured in the Star-Chamber, and received a sharp castigation, which made him more obstinate and malicious against them; and, as he afterwards confessed, in the melancholy of his imprisonment, and by reading the book of Martyrs, he raised in himself a marvellous inclination and appetite to suffer in the defence or for the vindication of any oppressed truth; and found himself very much confirmed in that spirit; and in that time diligently collected, and read all those libels and books, which had anciently, as well as lately, been written against the church: from whence, with the venom, he had likewise contracted the impudence and bitterness of their style; and by practice, brought himself to the faculty of writing like them: and so, when that licence broke in of printing all that malice and wit could suggest, he published some pamphlets in his own name, full of that confidence and virulency, which might asperse the government most to the sense of the people, and to their humour. When the war began, he put himself into the army; and was taken prisoner by the king's forces in that engagement at Brentford, shortly after the battle of Edge-hill; and being then a man much known, and talked of for his qualities abovementioned, he was not so well treated in prison as was like to reconcile him; and being brought before the chief justice, to be tried for treason by a commission of Oyer and Terminer (in which method the king intended then to have proceeded against the rebels which should be taken) he behaved himself with so great impudence, in extolling the power of the parliament, that it was manifest he had an ambition to have been made a martyr for that cause. But as he was liberally supplied from his friends at London (and the parliament in express terms declared, ‘that they would inflict punishment upon the prisoners they had of the king's party, in the same manner as Lilburne and the rest should suffer at Oxford’) so he did find means to

corrupt the marshal who had the custody of him; and made his escape into the parliament quarters; where he was received with public joy, as a champion that had defied the king in his own court.

"From this time he was entertained by Cromwell with great familiarity, and, in his contests with the parliament, was of much use to him, and privacy with him. But he began then to find him of so restless and unruly a spirit, and to make those advances in religion against the Presbyterians before he thought it seasonable, that he dispensed with his presence in the army, where he was an officer of name, and made him reside in London, where he wished that temper should be improved. And when the parliament was so much offended with his seditious humour, and the pamphlets he published every day in religion, with reflections upon their proceedings, that they resolved to prosecute him with great rigour (towards which the assembly of divines, which he had likewise provoked, contributed their desire, and demand) Cromwell writ a very passionate letter to the parliament, 'that they would not so much discourage their army, that was fighting for them, as to censure an officer of it for his opinion in point of conscience; for the liberty whereof, and to free themselves from the shackles in which the bishops would enslave them, that army had been principally raised.' Upon which, all farther prosecution against Lilburne was declined at that time, though he declined not the farther provocation; and continued to make the proceedings of the parliament as odious as he could. But from the time that Cromwell had dispersed that parliament, and was in effect in possession of the sovereign power, Lilburne withdrew his favour for him; and thought him now an enemy worthy of his displeasure; and, both in discourses and writings, in pamphlets and invectives, loaded him with all the aspersions of hypocrisy, lying, and tyranny, and all other imputations and reproaches which either he deserved, or the malice or bitterness of the other's nature could suggest to him, to make him the most universally odious that a faithless perjured person could be.

"Cromwell could bear ill language and reproaches with less disturbance, and concernment, than any person in authority had ever done: yet the prosecution this man exercised him with, made him plainly discern that it would be impossible to preserve his dignity, or to have any security in the government, whilst his licence continued; and therefore, after he had set spies upon him to observe his actions, and collect his words, and upon advice with the council at law of the state, was confidently informed, 'that, as well by the old established laws, as by new ordinances, Lilburne was guilty of high treason, and had forfeited his life, if he were prosecuted in any court of justice,' he caused him to be sent to Newgate, and at the next sessions to be indicted of high treason: all the judges being present,

and the council at law to enforce the evidence, and all care being taken for the return of such a jury as might be fit for the importance of the case, Lilburne appeared undaunted, and with the confidence of a man that was to play a prize before the people for their own liberty; he pleaded Not-guilty, and heard all the charge and evidence against him with patience enough, save that, by interrupting the lawyers, sometimes, who prosecuted him, and by sharp answers to some questions of the judges, he shewed that he had no reverence for their persons, nor any submission to their authority. The whole day was spent in his trial; and when he came to make his defence, he mingled so much law in his discourse to invalidate their authority, and to make it appear so tyrannical, that neither their lives, liberties, nor estates were in any degree secure, whilst that usurpation was exercised; and answered all the matters objected against him with such an assurance, making them 'to contain nothing of Ligh-treison, and that to be a government against which high treason could not be committed;' and telling them 'that all true born Englishmen were obliged to oppose this tyranny, as he had done purely for their sakes, and that he had done it only for their sakes, and to preserve them from being slaves, contrary to his own profit and worldly interest:' he told them 'how much he had been in Cromwell's friendship: that he might have received any benefit, or preferment from him, if he would have sat still, and seen his country enslaved; which because he would not do, he was brought hither to have his life taken from him by their judgment; which he apprehended not:' he defended himself with that vigour, and charmed the jury so powerfully, that, against all the direction and charge the judges could give them (who assured them 'that the words and actions fully proved against the prisoner, were high treason by the law; and that they were bound, by all the obligation of conscience, to find him guilty') after no long consultation between themselves, they returned with their verdict, 'that he was Not-guilty:' nor could they be persuaded by the judges to change or recede from their verdict: which infinitely enraged and perplexed Cromwell; who looked upon it as a greater defeat than the loss of a battle would have been. And though Lilburne was thus acquitted in the year 1653, yet Cromwell would never suffer him to be set at liberty, as by the law he ought to have been, but sent him from prison to prison, and kept him enclosed there till he himself died. The two instances of persons not otherwise considerable, are thought pertinent to be inserted, as an evidence of the temper of the nation; and how far the spirits of that time were from paying a submission to that power, when no body had the courage to lift up their hands against it."

To the printed Account of the above Trial, published [with this Certificate: 'At the ear-

'nest desire of the Printer, I have read this following Discourse, and cannot say but that I do verily believe, the penman of it hath done it with a very indifferent hand betwixt the Court, and myself the Prisoner: And so far as in me lies, I am for my part willing the world should see it. JOHN LILBURNE. Southwark, this 28th of November, 1649.'] almost immediately after the Trial, was added the following APPENDIX, containing a relation of some things which had passed just before the Trial came on.

#### THE INNOCENT MAN'S FIRST PROFFER;

OR,

The Proposition of Lt. Col. JOHN LILBURNE, Prerogative Prisoner in the Tower of London, made unto his present Adversaries, and to the whole Nation of England, October 30, 1649.

For WILLIAM HEVENINGHAM, Esq. of Heveningham, in Suffolk, these present;

Honoured Sir; Having sometimes the opportunity to discourse with you, there appeared that in you unto me, that gives me encouragement to pick you out above all men that now remain sitting in your House, to write a few lines unto, in as moderate a way, as my condition and provocations will permit me; I have now within very few days been seven months a prisoner, the legality or illegality of which I shall not now discourse, having already of late said so much in my own Defence\* grounded upon the law, your own Declarations, and the Army's; which with other things, it seems, hath occasioned your house to pass a special Commission of Oyer and Terminer, to try me, which whether such a Special Commission, made by never so unquestionable authority, be not contrary to the Petition of Right (which you have so often sworn, and particularly declared to maintain inviolably) I shall for brevity sake not now dispute; only give me leave (and I hope without any offence) to put you in mind of that excellent and printed Argument (in "Speeches and Passages of Parliament, 1640-41," p. 409, 410, 411, to 417) of Mr. Hyde's, your *quondam* fellow member, before the Lords in Parliament, as the then mouth of the Commons House, in April 1641, upon the Special Commission of Oyer and Terminer, that was exercised in the five Northern counties at York, in which Argument, besides many excellent and observable Passages about the midst of it, he interrogates and saith: 'What hath the good Northern people done, that they only must be disfranchised of all their privileges by Magna Charta and the Petition of Right; for to what purpose serve these Statutes, if they may be fined and imprisoned without law, according to the

'discretion of the said Commissioners of Special Oyer and Terminer; what have they done, that they and they alone, of all the people of this (then) happy island, must be disinherited of their birthright, of their inheritance?'—I shall at present make no application for myself, only I shall add a few more of his lines towards the conclusion of his Argument, in page 415, which I hope cannot be offensive, being spoken by him that was so eminently authorized thereunto, where he saith to the lords: 'Truly, my Lords, these vexed, worn people of the North, are not suitors to your lordships, to regulate this Court (of Oyer and Terminer) or to reform the Judges of it, but for extirpating these Judges, and utterly abolishing this Court: They are of Cato's mind, who would not submit to Cæsar for his life, saying, he would not be beholden to a Tyrant for injustice; for it was injustice in him to take upon him to save a man's life, over whom he had no power:' which Court of special Oyer and Terminer, was absolutely and totally abolished, by that excellent Act that abolished the Star Chamber, being the 17th of the late king, A. D. 1641.

But, Sir, if it shall be objected against me, that you are necessitated to take such an extraordinary course with me, as a Special Commission of Oyer and Terminer is, because I will not own your authority; yea, and if you so continue to deal with me as you dealt with the late king; unto which at present I answer, first, the King's Case and mine is different; for he refused to answer to his Charge, principally out of this consideration, because he had inherent in him an old received principle (as appears in his Answer to the Petition of Right, anno 1627, and in many of his Declarations made since the beginning of the late Wars, and by his Speeches at his death;) by virtue of which, he judged himself as not liable or capable of being judged by any power on earth, but only by God alone, and as being in any sense not in the least for any action he did, (though in itself never so vile) subject to the punishing part of the law.

Now for my part, I do not in the least refuse to be tried out of that consideration, for I acknowledge myself but a bare Englishman, subject to the laws thereof, as well in the penal, as in the directive part of them; unto the ordinary rule of which, with all my heart, I am willing to stoop, and I wish my adversaries would do the same, and then I believe the controversy would not long last betwixt us.—But seeing, betwixt my adversaries and myself, there is a difference about the legality and justness of Power, which in some late printed Papers and popular Discourses, is made use of against me, as though I had a self conviction in mine own conscience, of my own guilt, and therefore do avoid, as much as in me lies, a trial.

To take off which, and to lay myself and my adversaries nakedly, and fully open to the judgment and censure of all ingenuous and rational

\* See my "Salva Libertate" sent to the Lieutenant of the Tower in September last, and my Discourse with Mr. Prideaux, intituled, "Strength out of Weakness."

men in England, I do hereby under my hand and seal (for that end it may be shewed to your House) proffer you, beside what I lately proffered Mr. Pritcheard, which is contained in the 18th and 19th pages of the substance of that Discourse now in print, and here inclosed, that I am willing and ready, if they please, to chuse one of your own twelve Judges, that sit in one of the three Public Courts at Westminster, and all or any of my adversaries shall chuse which of the eleven remaining they please, and I will freely and voluntarily oblige and bind myself under my hand and seal, before Witnesses, to stand to their final and absolute determination, (upon the principles of law,) for all differences betwixt them, or any of them and me, although it reach to banishment, loss of estate, limb or life; so my adversaries will do the like.

Provided the hearing may be open, public, and free, indifferently for both parties, and that the Judges give their Judgment in writing under their hands, with their reasons for their so doing, to every point of their Judgment. And provided I may for my own benefit, use, or advantage, choose two friends freely to take, as well as their pens will enable them, all that passeth *pro* and *con*, without danger to their persons, liberties or estates; or without hazard of having their Papers (by force or authority) taken from them, and this I think is as fair as any rational man under heaven can desire, and which I cannot believe, you can judge to the contrary; especially considering it is so consonant, to that righteous rule of the Son of God, Jesus Christ, contained in the Scripture, (the Volume of Truth) viz. 'to do as you would be done to,' which is the sum of both the law and gospel, and of all righteousness amongst men.

And I hope this is so fair, that those that most thirst after my blood, cannot, nor will not, refuse it; but to make it more fair, if they judge it inconvenient to fix upon two of your own Judges, who in interest are positively engaged against me, I will be content they shall chuse one Scholar, commonly called a Clergyman, and I will chuse another; or a Citizen or a Country-man, which they please, and I will do the like.

So with my humble service presented to you, craving pardon for my boldness in troubling you, with whom I have had so little face to face acquaintance, earnestly intreating your utmost interest, speedily in acquainting your house herewith, in the most public manner you can: I commit you to the Lord my God, my Protector and Preserver, and rest yours (desirous particularly to be engaged yours to serve you)

JOHN LILBURNE.

From my captivity and bodily bondage,  
in the Tower of London, October 20,  
1649.

#### The POSTSCRIPT to the Reader.

Since I sent the foregoing Epistle, I understand that Wednesday next, being the 24th of

Oct. 1649, is positively resolved by my Adversaries to be the day of my Trial; and therefore I cannot chuse but publish this in print; and because a late Pamphlet-scribbler, and pretended Vindicator of sir Arthur Haslerig, said to be Mr. Thomas May the Council of State's pensioner, renders me in his late false and lying book to be an Atheist, a denier of God and the Scripture, and given up to all licentiousness, and an absolute confederate with Prince Charles, to set up his absolute will and prerogative in this nation: And therefore not knowing whether my life will be mine so long till I am able to publish a Vindication at large, against his base calumnies, I shall desire you to take this at present, and if I die before more come, let the constant series of my Actions and Writings be my future testators, That if to believe constantly all that is contained in the Law and the Gospel, and to have confident hope of the Resurrection of the Dead, and the Life to Come, and particularly of my own, and to live conscientiously in all good conscience, as in the sight of that God that searcheth and knoweth the hearts of all the sons of men, both before God and men, be sufficient cause to be judged an Atheist, then I am one; and if to oppose with all my might and strength all interests whatsoever that would set up a single man or more, to rule and govern by will and pleasure, without bounds, limits, check or controul, be sufficient cause to be judged a Cavalier, and for Prince Charles, then must I ingenuously confess I am such a Cavalier, and I hope so to die; for which I bless God, I am ready and fitted, let it be by what butcherly hands it will.

JOHN LILBURNE.

The second thing in order, is his Brother's and his Wife's Petition; the Copy of which thus followeth:

To the right honourable the Supreme Authority of this Nation, the Commons of England in Parliament assembled: The humble PETITION of Col. Robert Lilburne, and Elizabeth Lilburne, in the behalf of lieut. col. John Lilburne, Prisoner in the Tower of London.

Sheweth: That although lieut. col. John Lilburne, your Petitioner's Brother and Husband, by his late actions hath incurred the displeasure of this honourable house; yet since God hath so ordered human affairs, that it is incident to his people, though of real integrity, and of hearty desires of good to the nation, to differ about the means, times, and seasons requisite for the accomplishing thereof, we hope your wisdoms will put the most favourable interpretations to such differences, and not to attribute them to any evil intention or design, but an over-earnest longing for such a perfect settlement of this commonwealth, which time only, and further opportunity can afford us.

We humbly conceive, he hath formerly given sufficient proof of his faith and fidelity to his country, by his former sufferings, both before this Parliament, when he bore testimony against

Regal and Episcopal tyranny, and since also, in the frequent exposing his life to the utmost of dangers in your service, in all which, he did manifest, that the temptations of this world were not able to shake his integrity, and that for the enjoyment of any outward emoluments, he would not forsake the dictates of his own conscience; and though we could heartily wish he had forborn those things which have drawn upon him his late sufferings, yet are we well assured, and that upon the nearest and strictest scrutiny we can make into his heart, that no indirect ends or worldly allurements, have engaged him therein; a manifest argument whereof, we humbly conceive to be, for that neither the urgency of his necessities, which have been very great, and which are usually very persuasive to men not guided by conscience; nor yet the importunity of dear friends, which have not been wanting, and yet not any whit restrained therefrom; and therefore we hope this honourable house will distinguish betwixt weakness and design, and think of some way of moderation towards such, as instigation of conscience and error of judgment, have brought into your displeasure.

And though the obligation of our particular relations, cannot but move us to this Address on his behalf; yet we humbly conceive, it will not only occasion much sadness to many of your friends, but much more joy to the common enemy to see his ruin: Yet considering his principles are a burthen to this state,

We do therefore most humbly present our assurance and confidence of his purpose, to withdraw himself into some foreign country, desiring he may have his money, which is necessary to his and his family's subsistence in their transplantation, and convenient time to prepare himself to go, and he will wholly betake himself to his particular duty and calling, and that those of his judgment who are free to go along with him, and have arrears due to them from the Parliament, may have their arrears paid unto them, and be permitted accordingly to transplant themselves, humbly imploring this honourable House to take the premises into speedy and serious consideration, and laying all his former merits, faithful services, persecutions, stripes, bonds and imprisonments, with hazard of life, and loss of estate, in opposition to Royal and Episcopal Tyranny in balance to his late miscarriages, to do therein (out of your wonted mercy and clemency) as may be most for the glory of God, frustrating the longing desires of the common enemy to see his ruin, rejoicing and satisfying the spirits of many of your friends; and for answering the humble and most earnest request of your Petitioners, whereby they shall be for ever engaged to pray, &c.

ROB. LILBURNE.  
ELIZ. LILBURNE.

This was delivered October 22, 1649, but was altogether fruitless; the next thing in order thus followeth:

VOL. IV.

#### THE INNOCENT MAN'S SECOND PROFFER:

Made unto his present adversaries, Oct. 22, 1649, and communicated unto them, by his loving brother col. Robert Lilburne.

Brother; In answer to your late Letter, I can make no other proposition, besides what is in my letter to Mr. Heveningham of the 20th present, than this; That seeing myself, and the principles I profess, are a burthen to the men in present power, therefore (for peace and quietness sake only), I will engage (enjoying my money and my immediate liberty), that I will within 6 months time transplant myself into some part of the West Indies; provided, that all those that are free and willing to go along with me of what quality soever, may have free liberty at their pleasure to go, and provided, seeing many of those I know willing to undertake the journey, are made very poor by reason of their sufferings in the present distractions, may have all such monies justly paid unto them, as is owing them, either upon arrears, for faithful service already done, or for monies lent to the public, that so they may be the better enabled for their journey, they engaged thereupon to go; and provided, that other that are willing to go, and are so very poor, that they cannot transplant themselves, may have from the public some reasonable allowance for that end, this being the land of their nativity, where by the law of nature, they may challenge a subsistence; and therefore it is but just, seeing their company and principles are a burthen and trouble to the men in present power, that they should make their willingness (for peace-sake), able to transport themselves into a desert, where, with industry, and the blessing of God thereupon, they may expect a livelihood, and this, with the engagement of the present power, for a peaceable protection while we stay here in England, and for their assistance for a reasonable convoy in some part of our journey, I will engage in security, I will not act against their power, during my stay in England, directly or indirectly; but for me to engage singly to go alone, seeing I know no plantation already planted; but I would sooner chuse, to be cut in pieces in England, than engage to go to it: therefore particularly I shall not engage, without terms abovesaid, come life, come death, to which I shall stand: witness my hand,

Tower, Oct. 22, 1649. JOHN LILBURNE.

This was sent to col. Rob. Lilburne, who shewed it to several Parliament men, but all in vain, for nothing would serve their turn but his blood. The next in order, is that notable Petition of his whalebone friends, already in print; the copy of which, for its worth, I judge fit here to insert, which thus followeth:

To the Commons of England, assembled in Parliament: The humble Petition of the Well-affected, in and about the city of London, Westminster, and parts adjacent; Presenters, and Approvers of the late Petition of the 11th of September, &c.

Sheweth; That as the wisdom and goodness

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of God is the best example to all authorities in the world; so those in authority can in nothing more resemble God, than in their readiness to hear and receive the complaints and petitions of any that apply themselves unto them: And who in cases of dissatisfaction willingly condescend to a reasoning out of all doubts and differences, for so his godliness deigned to 'commune with his servant Abraham,' and even to a sinful and gainsaying people he saith, 'Come let us reason together.'

And surely if ever there were need of such a goodness, now is the time, when not only complaints and distractions abound in all places, but multitudes of cordial friends to the parliament are exceedingly grieved and saddened in their spirits, as not seeing the Commonwealth in a condition of freedom, or exemption from grievances and burthens (in any measure), answerable to the many promises of the parliament, to the affections of those that have assisted them, or to the endeavours, engagements, intentions, and desires of the Army.

Every one believing, That in a very short time after the expulsion of the greater number of the members of this honourable house (as betrayers of their trust) A new Representative should immediately have been ordered, according to that model of an Agreement of the People, tendered by the Council of the Army, or in some other way. And that because that honourable Council in their Declaration of December last, declared, 'That they should not look on the remaining part as a former standing power to be continued; but in order unto, and until the introducing of a more full and formal power in a just representative to be speedily endeavoured, by an Agreement of the People.'

And we were the more confident hereof, because they had formerly declared also, 'That where the Supreme Authority was first in the same persons during their own pleasure, it rendered that government no better than a Tyranny, and the people subject thereunto, no better than vassals: That by frequent elections men come to taste of subjection as well as rule,' (and are thereby obliged for their own sakes to be tender of the good of the people), so that considering those expressions, and those extraordinary things done (declaredly) for a speedy new elected Parliament; how it should come not only to be wholly deferred, but to be matter of blame for us, or any of our friends earnestly to desire what is so evidently just and necessary in itself, and so essential to the liberties of the nation, perplexeth us above measure; and we intreat some satisfaction therein.

And truly when you had voted the People under God to be the original of all just Power, and the chosen representatives of the People, the Supreme Authority, we conceived that you did it to convey those righteous principles (which we and our friends long laboured for), to the next full and formal representative, and not that you intended to have exercised the supreme law making Power. Much less; that

such ensnaring laws should ever have issued from a House of Commons, so often and so exceedingly purged, (intentionally by the Army) for the freedom of the Commonwealth, as is your Act against Treason, wherein contrary to the course of former Parliaments, and to Magna Charta, so many things are made Treason, that it is almost impossible for any to discourse with any affection for performance of promises and engagements, or for the liberties of the nation, but he is in danger of his life, if Judges and Juries should take it for good Law, which God forbid.

Also your Act for continuance and receipt of Excise (which every one hoped upon the prevailing of the Army, would have had a final end), to trade more oppressive than all the Patents, Projects, and Ship-money put together.

Also your Act for continuance and strict receipt of Customs was exceeding cross to expectation, that and the other for Excise, being esteemed most destructive to all kind of Commerce, Shipping and Navigation, and are so chargeable in the receipt, as that if what is disbursed to officers and collectors were raised in an ordinary way of subsidies, it would go very far towards the public charge, which it was hoped you would have seriously laid to heart, and have prepared a way to have eased the nation of both, and to have raised all public moneys by way of Subsidies.

It was hoped also, That you would have done something towards easing the People of the long complained burthen of Tythes, rather than to have enforced the same upon treble damages.

It was also expected upon the prevailing of the Army, and the redcement of this honourable House, That the Printing-presses should have been fully opened and set at free liberty, for the clear information of the People, the stopping of them having been complained of as a great oppression in the bishops times, and in the time of the late unpurged Parliament, rather than such an Act against all unlicensed Printing, Writing or Publishing, as for strictness and severity was never before seen in England, and is extremely dissatisfactory to most People.

And truly when you had declared so highly and resolutely for the maintenance of the law of the Land, as to the defence of every man's Liberty and Property according to that excellent Law of the Petition of Right, you may soon conceive what heart-breaking and torment of spirit was occasioned by your seizing in an hostile manner such constant cordial promoters of those excellent maxims forementioned, by the commitment of them in an extrajudicial manner to an arbitrary Prison, where they have been long time prisoners, and most of that time close prisoners, their chambers and pockets searched more than once, to find matter against them (things altogether unparliamentary) yea, denied a legal trial, no legal crime being laid to their charge, nor Accuser or Witness ever seen by them face to face, as law requires; and this to the ruin of themselves and

families, as to temporal subsistence : ? We profess we are not able to express the grief and amazement that seized on us thereupon, and which is daily renewed upon us, in that, now after extreme provocations, you seem resolved to take away the life of our dear friend Mr. Lilburne, and others, not by any ordinary way of Trial at the usual Assizes, but by a special commission of Oyer and Terminer, the Judges being composed of such as whose interest he hath long opposed ; a way much complained of in the corrupt times before this Parliament, and which we hoped we should have heard no more of in this Nation.

And although this is too too lamentable, yet would this were all ; but if we understand the Petition of Right truly, the putting of soldiers to death, or to other reproachful and painful punishments, by martial-law, in time of peace, is not agreeable thereunto, and if we are deceived therein, the express words of that law have deceived us.

But that such as have ventured their lives for you, and thought nothing too dear to be spent in defence of a just Parliamentary Authority, should yet be imprisoned (as some such there are) in remote castles, and used more barbarously than Mr. Burton, Mr. Prynne, and Dr. Bastwick,\* in the Bishops' time, and how soon intended to be proceeded against, by special Commission of Oyer and Terminer, (we cannot but fear :) this makes our very hearts to bleed, and our bowels to yearn within us ; insomuch as if no reason, conscience, fear of God, or sense of religion will put a speedy stop to these proceedings, but our most dear friends (because ever faithful to their country) must thus be ruined and slaughtered, under pretence of trials ; we shall not desire to breathe longer in this world, as seeing nothing but misery and slavery like to follow after them.

What a sad thing, we beseech you, is it, that it should be thus in this nation, in the first year of England's Liberty (as you would have it esteemed) which in our apprehension exceeds in misery and thralldom, the worst of England's bondage. For besides what hath been mentioned, what is more frequent than to examine men against themselves, to imprison men by votes of Committees, to seize upon men's persons by pursuivants and messengers, to swear men against themselves ; Taxes and Impositions never so high, and soldiers (not civil officers) set to gather them, to the terror of the people ; and upon the least denial, either violence or an imprisonment certainly ensueth : lawyers in effect are said to rule all, the laws are trod under foot by them, and wrested to what sense they please, and law suits extended beyond all reason, in respect of time and charge, then (as is verily supposed) having madded the clear intentions of this house, and perverted the just intentions of the army, poor impotent prisoners for debt, and small offences abound, and starve in prisons, through poverty and the cruelty of

lawyers and gaolers, and the poor abroad even perish for want of employment, and through the excessive price of food, and few or none lay these things to heart : and if any do, and become passionately affected therewith, and but speak their minds freely thereof, or (as hath been usual and commendable) endeavour to get people together in meetings, and propose Petitions for redress, the Puritans were never more reproached in the bishops' times, nor the Independents and Anabaptists in the late defection of Parliament than now all such are, with more odious titles (or the same in a more odious form, as Atheists, Levellers, Libertines, Introducers of Monarchy, Anarchy, and Confusion ; which are poisoned arrows shot principally at us and our friends, though most unjustly, none hating or abhorring either the principles or the practice more than we or our relations.

To our understandings, this is truly our miserable condition, and the sad condition of the Commonwealth, and which is the more grievous, because in a time when upon promise made in the presence of God and with appeals to his most righteous judgments, we justly expected the clearest and largest freedoms, with even a total redress of all grievances, and which is no small addition to our sorrow, that we are wounded thus sorely, by the hands whence we expected our most perfect cure.

So that what to say or do, either to help ourselves or our friends that are both in misery and danger, and the Commonwealth that lieth in no small degree of thralldom, we are exceedingly to seek, and therefore as in fit condition for his help only, that is a present help in time of trouble, and who maketh man's extremity his opportunity, we most humbly and ardently beseech his divine goodness to vouchsafe you a true Christianlike spirit of condescension, whereby you may be inclined to appoint some impartial persons to inform our understandings aright, of many things here complained of, that if we be, we may appear to have been mistaken, professing from our consciences, that as yet we are confirmed in these our apprehensions of things, not only from our own reasons, but from the Declarations, Promises, and Engagements of Parliaments ; and we trust, this way of reasoning out of differences will appear more like unto the ways of God, than by force or threats to stop our mouths, or suppress our understandings.

Also that he will both testify and mollify your hearts, that you may instantly look back from whence you are fallen, to the just ends, for which the Army reserved you together, and then not despairing, but the hand that wounded may heal (it being God's way) we would beseech you to render up unto the people their long detained right of new elections, and a new elected parliament.

To fulfil your promises concerning Magna Charta, and the Petition of Right, to unbind every burthen, and to break every yoke ; to give bread to the hungry, when you see the naked to cover him ; and not to hide yourselves

\* See No. 145, vol. iii. p. 711.

from those of your own flesh (your present humble petitioners) though never so much scandalized and reproached: to deliver the captive and set the oppressed free, and if for a testimony of your real intentions herein you shall release unto us ours and the nation's true friends, though pointed unto death or continuance in bonds, we shall rejoice above measure at so blessed an alteration, and then shall your light break forth as the morning; you shall finish your course with joy, all we have shall be ever ready to preserve you; and we shall ever pray that the Lord our God may be your exceeding great reward.

Reader. This foregoing Petition was (Oct. 23, 1649,) offered unto the House, with most earnest and importunate solicitation to have it received, but such a face of denial and opposition appeared amongst them, that neither the Serjeant at Arms, nor any member would so much as touch it, telling the Petitioners that the House would not receive any Petition in lieut. col. Lilburne's behalf; notwithstanding they have declared, That it is the Right of the People of England to petition, and their duty to receive Petitions, though against laws established, part took Declar. p. 720. The first and last of which in order is his Brother's single Petition, the copy of which thus followeth:

To the Right Honourable the Supreme Authority of this Nation, the Commons of England, in Parliament assembled: the humble Petition of Col. Robert Lilburne,

Humbly sheweth, That although of late presenting an humble Petition to this honourable house, in my own and my Sister's name, in behalf of my dear Brother, I had not the happiness to have the same considered; yet so strong are my affections towards him, not only as a brother, but as confident of his integrity, and that he hath been very serviceable formerly in his generation, though possibly accompanied with human frailties, but also exceedingly afflicted with the long continual sufferings of his faithful, dear, and now almost distracted wife. Hereupon, and for that it grieves me above measure, that he, whom all former powers sought to destroy for his affection to the present members of this honourable house (which powers you have abolished) and out of whose hands he (as it were) miraculously escaped, should come to receive his sad doom under your authority, when as I verily believe, that upon good grounded assurance, that could I but obtain so much favour of this honourable house, as to suspend all proceedings against him for some reasonable time, I should be able to convince him of the evil, of any thing that is really evil of itself, and whereby, possibly upon a mistaken conscience, he may unwillingly have incurred your displeasure; or if I should fail thereof, yet then that I should prevail with him to betake himself to some foreign habitation, and whilst he shall remain under your government, or elsewhere, for my engagemen-

ts, not in the least measure to disturb you in any your proceedings. And therefore, as an humble servant and faithful soldier of yours, for whose safety and preservation I have often readily adventured my life, I have taken the boldness again to presume upon your serious affairs, and most humbly and earnestly to entreat, as the only favour that ever you intend towards me, that you would be pleased to vouchsafe upon this my humble suit, that my said dear brother's Trial may for some reasonable time be yet suspended: in which time I do hereby become bound unto this honourable house, upon all the ties and bonds of Christianity and sincerity, to prevail with him to do what shall be, in one respect or other, to the full content, satisfaction and honour of this honourable house, and cannot but be full of hope that you will yet incline unto and grant this my humble Petition; whereby I shall ever be more strongly obliged to pray for your eternal peace and prosperity.

ROBERT LILBURNE.

This was delivered the 23d of Oct. 1649.

Upon the delivery of all which, Mrs. Lilburne, perceiving that nothing would serve their turn, but absolutely her husband's life, and being extremely abused by the reviles and threats of several of the members, but especially old Mr. Valentine, that used her most unworthily and basely, in a distempered and half-distracted condition she came home to the Tower to her husband, and with much importunity, in the bitterness of her spirit, besought her husband to stoop as low as possibly be could for the safety of his life, in the preservation of which hers was locked up; who, upon her bitter mourning and crying, and the beholding the anguish of spirit of her that had been so faithful and hazardous a yoke-fellow to him in his above seven years sorrow, wrung from him, with much ado, the copy of these lines following:

To the Honourable Wil. Lenthall, Esq. Speaker to the Knights, Citizens, and Burgesses, assembled in Parliament, to be communicated to the House.

Honoured Sir; As a man being somewhat at present confounded in myself, through a strong confidence of my own innocency (having suffered above measure, but intentionally done injury to none) and pressed under with the importunity of friends, especially with the heart-breaking sighs of my dear, but even half-distracted wife, as when my late children lay in a most disconsolate condition (which ended their lives) your house did me the favour to grant me my liberty to visit them, which I think was the saving of her life. So now greater importunities lying upon me from divers, and her that is dearer to me than many lives, I as earnestly entreat you to move your house, in the most effectual manner you can, that my Trial (so suddenly intended) may for some reasonable time be suspended, that so I may have time to hear and consider what many of them say they have to offer by way of reason and argument, to persuade me to what at present my conscience is

not convinced of. And I should likewise be desirous, if your house should judge convenient, that some competent number of gentlemen of your house might be permitted to debate with me those particulars, wherein I have appeared most to differ with other men's judgments: whereby possibly rational arguments may be so strongly urged, as peradventure may give such satisfaction as may tend to the reconciling many differences and distractions; upon the knowledge of the acceptance of which, during all that time of suspension of trial, I do hereby faithfully promise not in the least to disturb those that shall grant me this favour, being not so apt to make disturbance as is conceived. And herein you will exceedingly oblige,

Sir, yours to serve you,

JOHN LILBURNE.

From the Tower of London,  
this 24th of Oct. 1649.

Which yet availed nothing at all, but added to her sorrow, which being very great, he got his friends to intice her into the city, under pretence to go look after his Jury, and there to keep her, till his intended bitter portion were over; but although many have said, he used foul play towards his Jury, which was of his adversary's own calling, viz. Colonel or Sheriff Wilson, who is both a member of the House, and also of the Council of State, and who had not a dram of affection or compassion towards him in the least, in the pannelling either of his Juries, whose affection to his life may easily be discerned, by his pannelling the Grand Inquest, a copy of whose names, by an extraordinary strange providence, is within these few hours come to my hands, after all the ordinary ways were despaired of, as being impregnable by the forcible engines of gold or silver; which Inquest are most of them, if not all, engaged persons, the names of which, as they are come to my hands, thus follows:

- |                     |                                       |
|---------------------|---------------------------------------|
| 1. Robt. Manwayring | 12. John Brett                        |
| 2. Alex. Bormington | 13. Robert Swete                      |
| 3. Simon Greenhill  | 14. Jesper Clayton                    |
| 4. Thomas Laudal    | 15. Francis Ashhurst                  |
| 5. John Stone       | 16. Philip Meads                      |
| 6. John Allen       | 17. Thomas Smith                      |
| 7. Anthony Webster  | 18. Matth. White                      |
| 8. Francis Woolly   | 19. Wm. Rowel                         |
| 9. John Hinde       | 20. Sam. Ravenscraft                  |
| 10. Rob. Kendish    | 21. Rich. Gibbs, brother to Al. Gibbs |
| 11. Rich. Young     |                                       |

A very little time will produce notable things about some of the principal engaged men of the aforesaid Grand Inquest, that may be very fit for public view, as also about Mr. Prideaux, the Attorney-General's carriage towards them in the business, which may prove good foundations for able and faithful lawyers, to draw their results in law against them, as the foundation of good and sound actions in law for Mr. Lilburne to render good damages against them, for their illegal, unjust, malicious, and blood-thirsty prosecuting him for his life.

And also there is more than bare hopes of

the publishing an exact copy of the Lord Keble's Charge to the Grand Inquest, which, I understand just now, is complete in short-hand, and hath as many remarkable things in it as in either of the two days' passages that followed it; all which, rightly considered, might make ingenuous men blush by force to take them, and by force yet to detain Mr. Lilburne's estate from him, as he avowedly yet saith, Sir Arthur Hazlerig hath done and yet doth, considering so much injustice and malice hath been used towards him as hath been done; the detention of which can be upon no other grounds, being his all, but to necessitate the honest man again to cry out of his oppressions, by means of which Sir Arthur, &c. might, either by a Council of War, or a pretended legislative bill of attainder, take away his life without any more trials by a jury, and so accomplish that which many letters out of the North declare was Sir Arthur's avowed and declared end of his last journey from Newcastle: and if this were not still the design against Mr. Lilburne, without doubt Sir Arthur would not suffer a day to pass over his head before he had put Mr. Lilburne in the full possession of his money, as by law and equity he ought to do, without any more outcries from him, or any of his friends for him.

'Nec lex est justior ulla,

'Quem mens artificem arte perire sua,'

'Tis just he should be 'tangled in the snare,

'Which for another man he did prepare.'

November, 1649.

In 1650 was published the following Answer to the above Account of Lilburne's Trial:

A LETTER of due Censure and Redargution, to Lieut. Col. JOHN LILBURNE: touching his Trial at Guildhall, London, in October last, 1649:

WHEREIN

If there be contempered some corrosive ingredients, it is not to be imputed unto Malice: the intent is, to eat away the Patient's proud dead flesh, not to destroy any sincere, sound part.

2 Samuel, xvi. 5, 6, 7, 8, 11.

"And when king David came to Bahurim, behold, thence came out a man of the family of the house of Saul, whose name was Shimei, the son of Gerah: he came forth, and cursed still as he came.

"And he cast stones at David, and at all the servants of king David: and all the people, and all the mighty men were on his right hand, and on his left.

"And thus said Shimei when he cursed, Come out, come out thou bloody man, and thou man of Belial:

"The Lord hath returned upon thee all the blood of the house of Saul: and behold, thou art taken in thy mischief, because thou art a bloody man.

"And David said to Abishai, and to all his servants, &c. Let him alone, and let him curse, &c. It may be that the Lord will look on mine affliction, and that the Lord will requite good for his cursing this day."

London: Printed by Fr. Neile, 1650.

You Benjamites which envy Judah's crown,  
Cursing weak Princes, when their heads hang down:  
Which limit God by your intails, and spight  
Scepters transported by his sovereign right:  
Which scorn the son of noble Jonathan,  
As a desponding, poor, unhearsed man,  
Because he can behold without regret  
His father's flowers in David's garland set:  
Expect black-mouthed Shimei's tardy fate,  
The sword of Heaven trenches deep, though late.

Sin; God's strict injunction obliges us all to reprove sin, wheresoever we find it: and as far as reproof has any vigor in it, to endeavour the redgement into the right way of all such as wander from it through ignorance. I being therefore to direct this my reprehension and censure to you, desire you to accept of it, as enjoined by God himself: For I have read the relation of your Arraignment in October last, (the same as is verified, and vowed under your own hands and my conscience tells me, I should deal unfaithfully with you, and neglect God's command, if I should not strive to convince you, of the great scandal that has been given by it to all good and wise men. If I myself err, or transgress my bounds in this censorious, redargutory address of mine: I desire the like freedom from you; well knowing that in many things, we offend all: and therefore, God forbid, but I should be as ready to ask pardon, where I give offence, as to grant pardon where I receive any. Nay I am not more forward in begging your pardon when I know I have offended, than I am in challenging your censure, wherein I have offended, when I know not the same myself. Alas, it is a woeful obstinacy in some men that they will not hear, and it is as woeful a timidity in others, that they will not give just and due reprehensions. I doubt you are hardened in your errors, because so few declare against you: yet, I hope, this will easily sink into you, that other men's silence, when you are really become a public scandal, will neither be able to acquit you before God, nor disoblige them. This man pretends you are a stranger to him, that man intimates you are below his reprehension: a third objects, that you are mordacious, and so wilful, that you are beyond the benefit of any ingenuous reprehension: but sure, God's command of an office so just and charitable, as Christian oburgation is, is not so to be superseded or eluded. Your sin becomes mine, upon my silence, because I endeavour not to cure you: and my sinful silence adds to your trespasses, because it renders you the more incurable. For, first, all English Protestants are to regard you as a brother within God's command, and not as a stranger without it, for our common mother the State of England, and our common mother the Church of England, has a

share in you: and necessarily must suffer loss by the losing of you, or gain by the reduction of you: and so in both these respects, or consanguinous relations (religious and politic) you are to be tendered as a brother, though perhaps your face be strange to us. Nay, God's command of reprehension is so large, that he that may be made my brother by it, though he be not so as yet, is capable of, and may require at my hands all faithful brotherly offers from me. 2dly, If you were bred a man of trade, and not of letters: no man, how learned soever, can therefore alledge, that it is too inglorious a task for him, to contest with you. Your want of literature at the last day will not make you incapable of charity, or absolve them, who fail in the offices of charity towards you; the duty of reproof was not imposed on us by God, that we might gain victory to ourselves, but that we might recover souls to him: wherefore if any man make use of reproof only for trial of his wit, and affect therein a garland above truth: that man setting himself on work is to receive wages from him self: he remains still a debtor unto God, but it is not to be expected that God should be made a debtor unto him. 3dly, Others testify not against you for fear of your maleficency and inflexibility: but neither are these so to be acquitted before God. For God does not call all men in the forenoon, nor in the third, nor fourth hour of the afternoon: it belongs to us, early and late to admonish, and advertise, and with patience to expect God's time, and good pleasure, whether he will prosper our first, or our latter endeavours. Besides if God's call has preceded, yet we still must wait with patience, for his call does not always work a sensible change in the first moment, especially in men of rugged dispositions, and in those things which are most congenial to the ruggedness of their dispositions. Lastly, if a sensible, apparent change has been wrought by God's call, yet still more patience is required of us, forasmuch as there is so much instability, and lubricity in the best men, that none of us are absolutely free from temporary relapses, and strange defections at some times. These things therefore will charge justly all of want of charity, or pusillanimous despondence, who see other men's deviations, yet seek not to reclaim them, and receive scandals often times, yet use no endeavours to amend them.

But I hasten to the principal scope of this Letter, and to the particular heads of those things, for which you are liable to reproof.

1. The first thing, which in reading the manner of your trial gave me scandal, was: your prolix urging, and repeating of very many impertinent things, and yet complaining withal, that a just, and due freedom of speech was taken from you; it is most evident, (though you were not satisfied with your own vain loquacity) that a multitude of frivolous things fell from you, too unworthy to detain the meanest and idlest of your auditors, much more unworthy to entangle a bench of such honourable, and sage commissioners.

2. The second was: your laying hold of divers shifting cavils, and shuffling exceptions in law, which were only fit to waste time, and procure trouble to the court, (they were far from making any defence for you at all) and yet complaining at the same time, that the law was forced, and violenced to your destruction.

3. The third which convinced me of your ignorance, if not of your impudence, was the utmost strength of your most formal pleas, and reasons in law: for in my mind even those, though you demeaned yourself strangely presumptuous upon the justice of your cause, and upon your knowledge of the law, were exceeding defective, and insufficient.

4. The 4th. thing which gave me deep offence, and left you totally inexcusable in my judgment, was your bitter railings against the judges, nay your most filthy reproachings against all law, and authority, I might almost say against humanity, and divinity too; and yet still whilst you treated your judges as the most despicable creatures in the world, your complaint was, that you were most villainously treated yourself.

5. The 5th thing which deserves a keen reproof from all honest men, was your assailing the sincerity of your jurors so diversely, it was very plain that by the insidious clamours of your disciples, you attempted them one way, and by other subtil blandishments you seemed to wind yourself into their favours another way. For though you had the hap to amuse your 12 men, there is scarce any honest man in England, that is not moved to a great deal of disdain at the gross attempts which you made to debauch them both ways.

Of these in this order:

1. In your Arraignment's first entrance, being called upon to hold up your hand according to the old custom and law of England, by way of anticipation you demand freedom of speech: a thing you could not doubt of, provided you would not extend the bounds of your freedom too far. But it should seem your demand was for freedom of speech void of all bounds, and that your Judges might put no difference betwixt matters alledged proper for the time, place, and trial in hand, and matters utterly improper: you must have it as free for you to waste time away, and to abuse the court's patience by trifling, as to defend yourself by opening the true state of your cause, and giving judicial answers to to your indictment. You begin therefore with long harangues of what had passed at Westminster, and Oxford, at some Arraignments of yours before the house of peers, and judge Heath: and then making no just use thereof: you descend as causelessly to speak against clandestine Trials, and upon that occasion you inform the court, what had once been debated betwixt Mr. Miles Corbet and yourself at a committee for Examinations. From thence you slide to the great exploits that

were done at Brentford against the king's army by yourself, and some few others. From thence you digress to some conference betwixt the lieutenant of the Tower, and yourself, wherein is laid open what faith you had given him to be his true Prisoner. You next rove further from thence, and inform the Court what the lord President Bradshaw, and Mr. Cook had pleaded for you in 1641, against the rigorous urging of oaths by the Lords of Star-Chamber: likewise, what your City friends formerly had suggested for you in their Petition: what estate of yours had been seized upon by some ministers of the parliament: what incivility the soldiers had shewed in apprehending you: what col. Walter Long had spent the king during his imprisonment in the Tower: what you had read in the Law-books against the special Commissions of Oyer and Terminer: how requisite it was that your Judges should expose their commission to your exception, that their power of judging you might so be submitted to your power of judging them.

To conclude, (though you concluded not so) after much more obstreperous contestation about so many several impertinences, you vouchsafe at last to arrive at your trial's introduction, to wit, the first ceremony of holding up your hand to the court, and even that ceremony also must afford you a larger field for your eloquence to expatiate in. This was your *preludium* in the forenoon of your first day: and to trace you further through all your extravagancies, for two entire days would be endless: but by this *preludium* any man may easily discern what lessons were played afterwards, when your pipes were once thoroughly tuned. You will perhaps say, though these and some other passages, by you repeated more than once, were foreign to the main issue of Guilty, or Not Guilty, yet inasmuch as they did some way tend to move commiseration in the people, they were not altogether unseasonable, or improper. But this supposes that you were brought to the bar as well to work upon the multitude, and catch the affections of the injudicious, as to satisfy your sworn judges and jurors in matter of law, or fact: which is a thing not at all to be supposed. For you must needs grant, that it belongs not to the common people that are admitted to see and hear, to pass any judgment at all: that it belongs not to the judges to see or hear, as the common people do: that public persons are to divest themselves of private affections: that if your Judges might not look upon you with private eyes, or acquit you of present guilt in regard of past merits, or former sufferings (which is not allowed to them) yet they are not to be swayed at all with your bare averments of your own merits and sufferings without sufficient testimony, and examination of others. You know the old theorems of law: Judges are to proceed, and pass sentence, not *secundum allegata*, but *secundum allegata et probata*: and therefore

in all courts of justice, things not made apparent, are in the same predicament, as things not existing. It appears, therefore, that all these discourses of yours, wherein so many hours were consumed, were improper, and extrajudicial; and this appearing so clearly, with what front could you pretend, and clamour as you did, that freedom of discourse was taken away from you, and that all that was due to an Englishman was denied you? Is it possible, is it reconcilable to sense, that you could be abridged of just liberty in pleading things pertinent, and yet at the same time range abroad so wildly, and profusely lavish away your oratory in things so impertinent? Two entire days were spent in your trial, and yet it is most evident by the short issue you were put upon, (*viz.* whether you were the author or no of such, and such pamphlets) that as much business of other men's uses commonly to be dispatched in a quarter of the space, as was dispatched then of yours. Your own narrative also, set forth by your own approbation (if not order and direction) shews, and ocularly demonstrates, that in your long trial, neither the commissioners on the bench, nor the counsel at bar took up half so much time in speaking, as you yourself did. There can be no error in this, if we will but number your leaves, and lines of your own panegyric, ostentatious, relations. Besides, not only the prolixity, but also the acrimony of your language testifies against you: for men that are restrained from speaking, are much more restrained from speaking insolently, maliciously, and abusively: and the same authority that checks modest language, will serve to choke up, and obstruct all immodest expressions. Sure, you were not well advised, when you suffered this book of your trial to pass the press: for it either contradicts you, or itself; inasmuch as in some places it contains very passionate complaints of yours against the court, as if it triumphed over you, and debarred you of a free defence: yet the whole tenor of it from one end to the other declares simply, and pregnantly, that your judges were by you treated as the most abject captives in the world, and, as it were, dragged up and down before the vulgar, only to grace your chariot wheels. In due place I shall instance to you, and give in particulars how insulting you were, how the ears of your judges were always defended almost with their own reproaches, and all other mens mouths stopped with your hyperbolical boastings. Such odious shameless things were scarce ever vented by any brawler whatsoever, in any place whatsoever, much less did ever any prisoner at the bar presume to spit such things in the face of justice itself. But my order leads me next after your mere impertinencies to your frivolous cavillations.

2. I shall here only recite, with much brevity, some of your principal subterfuges, and denurring pretences, and then let the world judge, whether ever any tribunal before would suffer justice to be so baffled: or any prisoner before ever thought it worth while to lay hold of

such poor advantages. The ceremony of your band's erection must first be explained to you; and when by its explanation it appears harmless, and of a reasonable signification, you will agree to do something equivalent and tantamount, but the ceremony itself, and its ancient authority, you will not submit to. For your judges commission, you must first be advised whether it be general or special: and when you are advised that it is not special: yet you must have leave a great while to shew your learning and reading against special commissions. When you are to plead to your Indictment of Treason (Guilty, or Not Guilty:) you must first spend time in pleading against such pleading: and when that will not prevail, you give a conditional, delusory plea, such as you think is good enough for the trial to proceed upon whilst you please, but may be revoked at your pleasure. When your Indictment is read, you must have a copy of it, you must have space for eight or nine days to put in exceptions against it: you must have counsel assigned you to prepare those exceptions: and if these things be granted, (which you know were never granted in England or elsewhere) you will vouchsafe to make an absolute, binding plea. When the question is put, by whom you will be tried: you will not say by God and your country, because that is a form anciently prescribed, but after some time wrangled away, you will yield to the same in substance: that is, you will be tried in the presence of God by a jury of your equals, according to law. When you see your sophisms are not able to blind your judges, you carp at the very honour of your trial: you repine at the bench for being adorned with so much learning, and for being filled with so great a number of judges, aldermen, knights, esquires, &c. no less than forty in all: nay, neither your judges, nor the grand jury (though they were choice men also) could escape the brands of suborned persons, and conspirators against your life. When the judges, to pacify your impetuous noise for counsel, promise you shall have it, as soon as matter of law arises out of matter of fact, and in the mean time assure you they (according to their duty) will be faithful counsel to you, you answer, that your Indictment is nothing else but matter of law. When a second day is granted you to produce witnesses (a favour not expected by other delinquents, who at their perils are to be always ready with their witnesses to purge themselves of any crime) instead of bringing witnesses, you begin that second day with a disavowing of your plea. When you have used all art yourself in consuming, and dallying away time, you demand leave for your solicitor that he may come in upon the court, as a fresh reserve of yours. When the Petit Jury appears to be sworn, you are not contented to except against them yourself upon your own discretion; you desire your friends may be admitted also to except against them, because perhaps some of your friends may know some of them better than you do. When witnesses appear to prove you the author of such a bench,

you prescribe them to swear to this individual book, viz. that this identical book was delivered to the printer, and this identical book is intimated in the Indictment. When a single witness appears against you, though he be seconded with never so many pregnant circumstances, and strong presumptions, yea, though others contest also to the same thing, only not acted in the same place, and at the same time: you then wave the municipal law of England, and prefer the civil law before it: It is in vain for your judges to cite statutes against you: for either you are wiser than the statutes of England, or you are a wiser interpreter of the statutes of England, than your judges. When three competent witnesses depose against you as to the same seditious book, you say those books were not without erratas, and it is possible that the same book had had no seditious passages in it, had it not been for those erratas of the printer. When some of the books carried the signature of your own hand upon them, you put the Attorney General to his proofs that that was your hand: and if that be proved by the Attorney, you tell him plainly, he gains nothing by it, for except the book be proved your's otherwise, the signature of your hand proves it not so. When the printer's erratas will not help you, you say the book perhaps might be misdated, for if the book was made and dated before the Act of Parliament (which condemned such books as seditious) it was not seditious. When the Act of Parliament is proved precedent to the date, you say, perhaps the Act was not duly proclaimed, or else the copy of the Act read now, was not examined duly by the clerk's book at Westminster, or else the clerk's book at Westminster was no true parliament record. Let it be supposed also that you are proved the author of such books, and the same to be treasonable; yet still you defend yourself with this, that in those treasonable books, you had no treasonable intent, and then you are still upon this guard: 'Mens, non Actus facit rem.' The law condemns none for a treasonable act, except his intent be proved treasonable. Alas, what is there, that can escape your exception? From the judges, and the laws, and the witnesses, and the informers, and the jurors, you proceed at last to except against the door-keeper of the jurors. You pretend, forsooth, that the very door-keeper has express something of bitterness against you: and therefore you move that the door of the room where the jurors are to agree of a verdict, may be kept by some other man more impartial towards you. Who ever heard of such dallying captricioes before in any court of justice? who ever heard of any judges hands bound up before by the like nugatory cavillations of any prisoner whatsoever? You think your life a strange prey, that all the world should be such greedy hunters of it: but I think your soul a strange purgatory rather, that so many jealous, uncharitable thoughts, like Zim, and Ohim, should be disquieting haunters of it. The Parliament is

partial and conjured against you, because some members of it have been provoked by, and put at a distance, with you by some enmity of yours: The Attorney General is no competent Prosecutor against you, because he is a Burgess of parliament: The Judges are excepted against, because they are created by the Parliament: and all the rest of the bench are to be suspected, because, forsooth, they may be misled, and overborne by these creatures of the Parliament. Thus to you justice can never be administered, till the world be new moulded, nay nor yet so, except you have the new moulding of it. But I pray tell me, do all these objections and prolongations of yours savour of a dejected, oppressed spirit, or could they proceed from an imprisoned, over-awed tongue? *Judicet Orbis*. Surely you did direct these futile, empty umbrages of reason either to sway wiser judgments, or only to infect and trump the ruder multitude: if the first, you render yourself a very delirious man notwithstanding all your reading of the law, which you vaunt so much of; if the second, you merit the brand of a frontless impostor, and seem to prefer Mahomet's politics before Machiavel's.

3. I come now from your impertinencies and cavils, to the more rational and formal part of your defence: but what true strength there was in your best arguments and pleas; let the world judge and decide.

You begin with the Commission by which the Court sits upon you, and is qualified to absolve or condemn you. You argue stiffly that you ought to hear it read, and pass your censur of it; nay you pretend all other Commissions, besides those ordinary ones whereby the country assizes and quarterly sessions are held, are against law.

By this it should seem, the Judges come upon the bench to be judged of by Prisoners at the bar, as well as Prisoners at the bar come to be judged by the Bench. For if the party arraigned may freely question and dispute the authority before which he is arraigned, there must be some other court to determine betwixt him and his judges, or else he and his judges being both clothed with equality of jurisdiction, must depart upon equal terms, without any judgment passed on either side. And if so, what issue, what effect can justice have? I do not deny that a prisoner may be wrongfully condemned, I do not deny that a prisoner so wronged is remediable: I only deny the prisoner to be a competent judge of such wrongs. Upon this reason it stands, that a prisoner may appeal to a higher judge from the lower, but his right of appeal derives to him no right of judgment: nor can appeals lie but only from inferior courts. For if there were a freedom of judging due to prisoners, as well as of appealing, all impeachments and criminal charges would be endless, and utterly incapable of determination. Commissions hereupon are directed to the judges, not to prisoners, and being warrants for the judges to proceed upon, and to justify their sentences, not rules or laws

by which prisoners are to stand or fall, they ought to be read and examined by the judges, but not so by prisoners. Besides, though it may be proper for a prisoner in some cases to appeal at last from his judges, where they have not rightly pursued their Commission: yet he cannot plead at first to the virtue of the Commission, forasmuch as in so doing he appeals not to, but from the supreme authority: nor can he plead want of legal form in the commission, forasmuch as that pertains to the danger, or indemnity of his judges, not of him: and if he were as much concerned in it as his judges, which he cannot be, yet it were absurd that his judgment should be made equal or superior to the judgment of his commissioners. It is by you taken for granted, that the special commissions of Oyer and Terminer in the north (which were first granted by Hen. 8, and after continued by all his successors) were illegal and unlawful: if we should grant this too, as we do not, you may conclude, that the commissioners which acted thereupon, were answerable for acting without a sufficient warrant: but you cannot conclude notwithstanding, that any delinquent, or defendant suffered unjustly thereby, or was condemned contrary to law thereupon. Moreover, it is high arrogance in you to condemn all extraordinary commissions of Oyer and Terminer; and to say that the stat. of Westm. the 2nd (where the supreme power of the nation, king, peers and commons, was present, and did co-operate) by which such extraordinary commissions were established, was an irrational innovation. You may as justifiably say, that Edw. 3rd, and all the kings and parliaments since to this day have deserved your correction, and subjected themselves to your vile exprobration, for that they also have confirmed and kept in force the same irrational innovation. What an unlimited liberty do you take to yourself? such things are irrational innovations, because you affirm they are contrary to Magna Charta: and yet you know well the power and majesty of England, the same as created Magna Charta itself, by several statutes and by a continual continuation of practice for the space of above 300 years, have declared them neither to be innovations, nor contrariant to Magna Charta. Wherefore since your judgment cannot bow to any, nor can pay a reverent submission to the authority of so many parliaments, or to the prudence of so many ages, what satisfaction are you capable of? You will say this parliament in 1641, when it consisted of four or five hundred members, and when it was an undefflowered council, condemned, and abolished the northern court. Let it be so: that particular court had declined from its primitive institution, and so was thought to be dissolved: but you know after much debate about the abuses of extraordinary commissions in general, and after a full poizing of all that could be urged on both sides, nothing was concluded further against them; and so the Parliament's resolution at last makes as much against you,

as its debate at first makes for you, 'Exceptio in non exceptis firmat regulam.' More was delivered at your trial by the Attorney General, and the Judges touching this subject: and that this commission by which you were to be judged, was not special but general: I shall not therefore add any more at present upon the subject, but refer you to your own memory. I shall only supply this advertisement, that whatsoever illegality can be objected against special commissions, it more befits and impacts the commissioners, than their prisoners arraigned before them, to dispute the same. And whereas you appeal (as it were) from this present devirginated Parliament, to that which sat in 1641, which acted so gallantly, as you say, for universal liberty; and not for self-interest: you must be reminded, that some but parliaments ought to judge of parliaments: and that parliaments become no parliaments when they are liable to the censures of private persons. You may be also further reminded, that the parliament of 1641 which was so pure, yet in 1648 afforded a great number of revolting members to the King: such as you yourself then judged revolters. Nay the same parliament in 1647, afforded yet many more revolters in your construction, for your first quarrel against the Parliament was, that it did not then purge itself of the degenerate members that assembled with Mr. H. Peliham. This is therefore a contradictory humour in you to decry the parliament in 1649, that you may exalt the parliament in 1641, when according to your own former judgment, the parliament of 1649, is only the unrevolting remainder of the parliament in 1641.

The next thing you complain of, is: that you are not arraigned in your county at the assizes, and that you were not apprehended by the civil officer, although the nation be now in peace, and you one that neither sought to fly, nor make resistance. Here you suppose that you are an ordinary person, that these are ordinary times, that the crime you are indicted for is an ordinary crime, and so you infer, that this apprehension, and arraignment of yours being extraordinary is against the common right and freedom of the nation. But, 1. for your person, you are not a common malefactor; you are presumed, upon no light grounds, to be the head, or one of the heads of a dangerous, and desperate faction; a faction that has already been in arms, and is still watching new opportunities of rising again in arms; a faction that has used all endeavours to disband, divide, and debauch the army, and to effect the same is willing to combine with royalists, or any foreign invaders whatsoever: the crime charged upon you is as heinous as can be, it is vigorously attempting by all manner of practices, and correspondencies, especially by seditious pamphlets, to imbroil this nation in a third civil war, and so to subvert the settled form of government. The former wars have been exceeding bloody, and long it was before the nation's wounds could be stanch'd, wherefore

another tearing open of the same wounds, would in probability make them more mortal, and more hard to be healed, than they were before. 3. For the times they are not so calm, and secure, as your party, together with the royalists, would fain make us to believe they are, to the end that you might the better incense the people against taxes and excise, and so wrest our arms out of our hands: We have not indeed ensigns flourished against ensigns in the field, nor weapons openly drawn against weapons, but every summer almost we have new insurrections, and even now we keep our colours unfurled, that we may keep yours furled: and our swords remain unsheathed to daunt you from unsheathing yours. 'Non recurrendum est ad extraordinaria in iis quæ fieri possunt per ordinaria.' we grant you so much; but you must then as freely grant to us; that where ordinary remedies are not so safe, and available, we must have resort to such, as are extraordinary. Judge Jenkins never read this maxim of the law to you, that a private mischief is rather to be chosen, than a public inconvenience. For certainly neither he, nor you, would so confound perpetually all persons, cases, and times, and be so oblivious of all necessity, and reason of state, as to put a private man's liberty in balance against public safety, and to value some formalities in practice equal with the highest of all laws, if ever you had seriously studied this incontractable, unerring maxim. Besides, were that law by which you challenge an ordinary trial at the assizes in Surry, every way equivalent to the empress of all statutes, customs, and formalities, *salus populi*: yet neither so would your challenge hold: forasmuch as your Treason, if proved against you, was committed not only in Surry where perhaps your books were written, but in London also where your books were printed, yea in every county of the land where they were published, and dispersed amongst the people. There is not a parish in England, or Wales, but may appear to prosecute you for a general disturber of peace, and mover of sedition, and one that has most desperately conjured against his whole country, and every part of it.

The 3rd thing you argue against is the plea of Guilty, or Not Guilty: it is against the Petition of Right, you say, that any man should be compelled to answer interrogatories against himself: that the Star-Chamber court was abolished for forcing such interrogatories upon us: lastly, that the practice of Christ himself, and his apostles, discharges us from answering to such interrogatories. You run here into a gross mistake, for that you distinguish not betwixt the abusive framing, and enforcing of some special interrogatories upon oath, where the crime is not of public concernment, and where other proof is failing, and where they extend further than to the point in issue; and demanding an affirmative, or negative without oath to the direct point in issue, where according to valid evidence a legal charge of public concernment is preferred. If these things were distinguish-

ed, you would not find any thing in the Petition of Right repugnant to the old interrogatory of Guilty, or not Guilty. For since the 3rd of king Charles, Delinquents have been tried, and held to this old plea, as well as before in all ages, and none of our judges ever yet sprung any such new interpretation, as you now spring, contrary to the custom of all times, and all nations. The odium that now lays upon some interrogatories has been contracted either by the fraud of the party interrogating, or obstinacy of the party interrogated; whereupon the sweet-tempered law of England, to prevent the mischief that might arise from either of these parties, that neither the one might strain questions too high, nor the other decline them too far, finds out a channel in the midst of the stream, neither totally abandoning them, nor giving too wild a license to them. The civil law is very rigorous, and in many places uses racks to extort evidence from ordinary delinquents, where there is but moderate presumption against them: and yet doubtless this rigor is more salubrious, than such a fondness as you now contend for, when you would reject all examinations in all cases whatsoever. The Star-Chamber was grown to a great abuse of interrogatories in private suits and differences, and was therefore wisely abolished; but this proves not, that the first institution of the same court, yea and its long continuation after under so many wise parliaments, was unpolitic. For in times of reformation it often happens, that even good things, when they have been far debauched, are prudently laid aside, and sometimes justly burnt, yea ground to powder, and made subjects of our detestation. Well therefore might the Lord President, whom, I shall always mention with as much honour, as you with contempt; nay whom your contempt confirms to me to be the more honourable, well might he detestate Star-Chamber Examinations, as they had been abused in the late king's days, and yet not declare himself now an absolute enemy to all examinations whatsoever. The obstinate silence of delinquents, when they will not confess, nor deny their guilt, is ever taken for a confession not only by the laws of England, but by the laws of all other nations; and it was more favour to you than you could challenge from your judges, that your plea, which you would not allow to be negative, was not taken for affirmative against you. It is true, if it were sin in a prisoner to confess his guilt, it would be sin in a magistrate to press him to such a confession; but since it is rather a service to the God of truth, to affirm a truth in the midst of danger, I mean such a truth, as is of more advantage to justice, and to the safety of a state, than it is of disadvantage to the party confessing, what rigor is in the law, or in the judge, that requires such a plea from the prisoner? For the objection, that evil minded men will deny guilt contrary to truth, of which untrue denial the magistrate by this means becomes the occasion; it is answered easily, in as much as he which is

no proper cause, though he be an occasion of offence, offends not therein: in as much also as the magistrate is not to prevent an uncertain offence by declining a certain duty; nor will the law presume all men false, because many are not true. As for our Saviour's example, who you say being examined before Pilate, would not by his own confession, or asserting of a truth, make himself obnoxious to judgment; It shews you as pseudodox in divinity, as you are in law. I shall by and by make it appear, that our Saviour, who neither had any guilt to confess, nor did refuse to give answer to any pertinent, judicial questions of the magistrate, nor had any hope of escaping condemnation by being silent, is very much blasphemed by you.

A fourth thing, for which you conceive your arguments are valid and conclusive, is allowance of counsel, as also time for eight or nine days to consult with them, before you answer your indictment. Your reason is, because you know not the formalities of law, as neither having Latin nor French, to read the books; and you say, it is a great deal of nicety and danger for an ignorant man to be locked up to single formalities. The judges tell you, that when matter of law arises out of matter of fact, you shall have counsel assigned you; that till such matter arise, they are your sworn counsel, and are bound to be indifferent betwixt the state and you; and they will take care that no niceties nor single formalities shall overthrow you. You do as good as reply, that because you are void of Latin and French, you must have counsel, and because they are partial, and you dare neither trust their offices nor oaths, you must have counsel such as you dare trust. The sum is this: because you are ignorant of the practice of law, you may rail at your judges, and because you may rail at your judges, you may claim time, and other counsel besides them, of your own choosing. If you were not as unskilled in the theory, as you are in the practice of the law, you would not, upon all occasions, so often insist upon inconveniences likely to ensue to yourself, and take no notice of public mischiefs; you would then be satisfied that your judges ought rather to admit of a mischief to you, than of an inconvenience to the state, although you perpetually urge them to admit of mischief to the state, rather than inconveniences unto you. You pretend, in the next place, that your indictment is long, and consists wholly of matter of law, and therefore time and counsel ought to be assigned you. Your judges answer you again, that though the indictment be long, yet you need not charge your memory with every part of it; the main matter of it is very brief, and no other but matter of fact, viz. Whether, or no, you were the author of the several books therein nominated? Now no study of law in England, neither that which is published in English, nor that which is locked up from the vulgar in Latin and French, can avail you in this matter. You may perfectly inform your

counsel, whether you composed those books, or no; but your counsel can inform you nothing at all therein. You still alledge, that after proof of the fact, it may be too late for counsel to assist you; and you are not able now to give answer without counsel, because you knew not before what would be the matter of your indictment. I wish you would at last remember, that the judges are not to consider only what is most behooful for you, but what is most behooful for you and the state; but still you continue your error in this, that you suppose your indictment to be mere matter of law, when as you might as well have pretended that it was all mathematics or metaphysics, as all law; for is there any impossibility at present for you to answer without counsel, whether these were your books, or no, because you knew not before what you were to answer to? When you say, your counsel may come too late after confession of the fact, your meaning is plain; it is insinuated thereby, that when you have disowned or owned a thing, they cannot procure you a new liberty to own or disown it the second time, and so not being able to nullify your answer, they cannot procure you new counsel, or new respite for eight or nine days more, to give in a new answer; but when you say, it is impossible for you, upon the sudden, and without advice of counsel, to own or disown books, you seem very dark to me; I cannot dive into your meaning. You come now to precedents, and say, first, that judge Heath, at Oxford, allowed you counsel before pleading. The judges' answers might give you full satisfaction herein: for, 1st, Heath well enough understood that your charge was not Treason; 2dly, if it were treason, he understood as well that the parliament had more prisoners of the king's, than the king had of the parliament's, and so the retaliation would turn to the disadvantage of the king. 3dly, The proceedings at Oxford are no fit rules for our courts at Westminster, nor is it congruous that you, who then fought against Heath and his confederates, for subverting law, should now cite his practice at Oxford for law, and bring us to rely upon him as a main pillar of justice. For another precedent, you cite the parliament in the earl of Strafford's Case, who, you say, had counsel assigned him before pleading; but this is contradicted by Justice Jermyn, and he better informs you, that the earl of Strafford, before pleading, had no counsel granted him, and if he had, the parliament was not so subject to the common rules of law, as inferior courts are. Your third precedent alledges, that major Ralph had counsel allowed him by the Lord Chief Baron Wilde, in a charge of treason, before the grand jury had passed upon him. But the Answers of your judges clearly avoid the force of this allegation; for, first, it is no more evident to this court what was done by the Lord Chief Baron in Ralph's case, than upon what reason it was so done. If counsel was allowed, it may be, Ralph confessed the charge, or there

might be some other difference in the case, and so the allowance of counsel might be legal; but, 2dly, suppose it to be illegal, and then it has no obliging force upon this court. That court which is engaged to administer justice according to the form of the common law of England, may not so safely follow one example varying from the old usage, as they may a thousand keeping more close to the same.

In the 5th place, you strive to invalidate the state's witnesses, saying, there are none but single witnesses now produced against you; and the validity of single witnesses is taken away by two statutes of Edw. 6. To this the judges answer, that the statutes of Edw. 6 are over-ruled by a later statute of 1 and 2 of P. and Mary. That also, by the common law of England, where treasons are triable thereby, one witness is sufficient, especially when there are several facts of a treasonable nature, and several testimonies given in to each respective fact. But if single witnesses be not sufficient, yet still in this case of yours, besides a concurrence of circumstances, and a triplication of witnesses to several facts of the same nature, and other strong presumptions, there wants not the complete number of two or three witnesses to one and the same matter, and such as lie under no just or reasonable exception.

In the 6th place, therefore, supposing the books proved to be yours, yet you say, there might be *erratas* either in the dating or printing of them; and you are not to suffer for other men's errors. Here is a great weight hanged upon a small thread: you must not be admitted to be the author of such and such treasons, because there is a possibility, a very remote possibility, that you were not the author of them. You strike and wound a man that dies immediately, and have nothing to plead for yourself, but a mere distant possibility that the man might have some other mortal inward disease, of which he would have fallen down dead at the same instant, though your hand had not been upon him. This plea will not hold good; you are here the affirmant, and the proof lies on your side; you must make it appear by chirurgions and physicians, that your blow was not mortal, and that there was indeed some other mortal cause, or else your mere alledged possibility will advantage you nothing at all. And if one possibility in that case will not acquit you, how should you be acquitted in this indictment, where many seditious passages in many several books are charged against you, and you have nothing to ward them all, but possibility upon possibility, that all those seditious passages might be caused by so many several mistakes of the printers, you having no proofs, nor colourable presumptions to offer, that there were indeed any such mistakes? He that affirms (whether he be plaintiff or defendant, if the matter affirmed be very important) must prove so far as he affirms, this is a rule in law and logic not to be dispensed with. And thereupon the defendant, if by good specialty it has been proved by the plain-

tiff, that money was lent, shall not avoid the action, by pleading payment, and satisfaction given, unless he prove and make the same evident. Away then with these toys of your printers' possible *erratas*! Away likewise with the possible misdating of your books! For the act of July last did not so much make as declare your books treasonable; and you know in my lord Strafford's case, when he insisted upon this, that where there was no law, there was no transgression, it was soon returned to him for answer, That endeavours to subvert settled government was against an internal law, if there were none written against it, being *malum in se*, not *quia prohibitum*; and for that reason every man in such transgressions, without written law, is a law to himself. It was also further pressed to him, that after the statute of the 25 Edw. 3, wherein treasons were specially enumerated, the parliament nevertheless had attainted divers delinquents, whose treasons were not enumerated in that statute, and it was no relief to the offenders to plead, that they had offended without warning, and were made the first examples of public severity. There is nothing more notorious than this, that the people's safety is supreme to all judicial laws, as well in order of time, as in order of nature; and that as it was the prime judicial law engraven on our breasts at the creation, so it ought to be the most fundamental law enrolled in our public treasuries.

The 7th prop of your cause is, that you are only accused and impeached for words, and by several statutes, you say, of Hen. 4, queen Mary, and queen Eliz. it is manifested, that they in those days detested the making of words or writing to be Treason. He that rightly distinguishes, rightly delivers, and teaches truth: but you relying upon a contrary art, an art of confounding things, not of distinguishing, render yourself justly suspected, that your aim is subtilly to infuse and inspire falsehoods into your disciples, not to hold forth or teach truths. You cannot but know there is sometimes a wide difference in words, yea in the same words; that some words signify more than others, and at some times sound forth greater matters than at others. For example, words in writing are more permanent, than words spoken: and words written are of a more transient nature than words printed, forasmuch as they intimate less of purpose and premeditation: and the same words spoken, written, or printed by a discontented man, or at the point of death, or directed unto persons aggrieved, carry much more weight in them, and use to make deeper impression, than they would if they had been uttered by another person, upon another occasion, unto men of another condition. Therefore the prophet, who regards some men's words no more than the crackling of thorns under a pot, or croaking of frogs in a puddle: yet likens other men's words to sharp arrows and poisoned darts, yea, and other men's counsels to the venom of asps and to the eggs of cockatrices. Adonijah had

a request to present to his brother Solomon, and for the more reverence sake he would use the mediation of Solomon's mother therein: the matter also of his request was only for a wife, for a wife of ordinary parentage, who in law could have no pretension to the crown: Howsoever Solomon, who found a great danger wrapped up in this plausible supplication, distinguishes further nevertheless, and by the sentence of his oraculous breast, that same design which deserved death, and was treasonable in his brother supplicating, was simple, and altogether inoffensive in his mother interceding. Achitophel was only of counsel with Absalom, we find not that he furnished horses and arms, or raised men with his manifestoes, yet doubtless his words were more pernicious to David at such a time, than the swords of ten thousand other revolvers; and David was more earnest with God to disappoint the inductions of Achitophel's tongue, than to rout and defeat all the other brigades and stratagems of his son Absalom. Tarquin, when his son consulted with him about the destruction of a neighbour state, conveyed his fatal, subversive plots by signs and dumb gestures: for even by doing execution with his staff upon the highest grown and fairest lillies in the garden, he sufficiently taught and instructed a young Traitor, to despoil a commonwealth of its most potent and most politic grandees. What Tarquin did without words or writings against a foreign enemy, may be practised nearer at home by an intestine conspirator, to the ruin of his own country, and shall we say that no law ought to take hold of such a conspirator, because his treasons did not amount to do so much as words or writings? Good Sir, study the superior laws more, and the inferior less, at leastwise when you have attained skill enough to render to every private man what is his due in chattels real and personal, make a further progress, and strive to satisfy yourself in that which is the due of the whole state, and concerns our general preservation. Monsieur Du Bartas, as he is Englished, advertises well (you may find law in verse sometimes, as well as in Littleton):

'Treasons are like the Cockatrice's eye,  
' If they foresee they kill, foreseen they die.'

The story of the basilisk perhaps is not to be credited in physics, yet it affords us this wholesome mythology in politics, that when we come within any near distance of Traitors (where their designs like poisonous beams of the eye may possibly reach us,) we must expect to surprise, or be surprized, to anticipate, or be anticipated. Away then with all your niceties in law, whereby you retard justice, if our safety cannot be provided for without some incommodity of yours, nor the absolute empress of all laws be served and obeyed, without infringing some privilege of yours: you must give us leave to prefer the being of England, before the well-being of any Englishman: nay the well being of England before the being of any Englishman whatsoever. Two whole

days are now consumed in one issue of yours, (whether such books were yours or no) and two whole months had been consumed, if all your arguments of dilation and respite had been hearkened unto: but if such a privilege be indulged to every prisoner in cases of Treason: what unprofitable, uneffectual things will justice and judgment become in England? How will treasons like hydra's-heads spring forth? whilst one delinquent is upon his trial, ten more will start up in his place: and either there will not be found judges enough, or the judges will not find time enough to arraign any considerable part of them. If words could not amount to treason, Achitophel and Adonijah would as easily purge themselves as you can, and so will a thousand other delinquents: but if you will grant that Adonijah might couch treason in an humble petition for a wife, and Achitophel do the like in his advices to his master's sons, grant also that the laws of England may be as severe against such traitors, as the laws of the Jews were. And for all your other subterfuges, except you think yourself a better pleader than that Gilonite was, you may well think his would have been as legal as your's are: grant him such a trial as you claim, and as much prolongation of time, and he will make his cause as fair as your's: nay leave him to be his own judge, as you in effect challenge to be, and he will justify Absalom's defeated army, and prove them as holy martyrs, as you do your Burford brethren. Consider also, that there is now more law against you for seditious books, than there was against Adonijah for petitioning his brother: and consider withal that the laws of England now, are not therein more rigid than they were in former times. You profess yourself exact in all the body of our English law (except only in the practical formalities of it) therefore I question not, you have read Burton's Case in the 10th of Hen. 7, the duke of Norfolk's Case\* in the 13th of Elis. together with Owen's Case† in the 13th of king James: and you know these (with divers others cited against the earl of Strafford, since the beginning of this Parliament) do inform you sufficiently, that many have suffered for merely traitorous words, even when no further traitorous act or intent was proved against them. Correct therefore at last your own impudent arrogance, by taking notice that there is nothing due to you, but what is due to every man in England: and that if every man in England shall baffle law as you do, and therefore accuse the present government, of tyranny and usurpation, because it refuses to be baffled: there remains nothing but that we all dissolve into our first chaos of confusion.

Your 8th help, or strength upon which you rest, is the power of your 12 Jurors. For you first pull down the Judges from their Tribunal as mere cyphers, and as clerks that have nothing

\* See No. 56, vol. 1, p. 957.

† See No. 100, vol. 2, p. 879.

to do, but to cry, Amen : and then into their seats you promote your 12 men, whereupon you grow confident, that this gratification of yours, together with your condescending to be their city brother, will bring them to your devotion, and cause them to employ their new given jurisdiction only to the advantage of the giver. We perceive hereby plainly the substance of your levelling philosophy to be briefly this : The Judges, because they understand Law, are to be degraded, and made servants to the Jurors : but the Jurors, because they understand no Law, are to be mounted aloft, where they are to administer justice to the whole Kingdom. The Judges, because they are commonly gentlemen by birth, and have had honourable education, are to be exposed to scorn : but the Jurors, because they be commonly mechanics, bred up illiterately to handy crafts, are to be placed at the helm. And consequently learning and gentle extraction, because they have been in esteem with all nations from the beginning of the world till now, must be debased ; but ignorance, and sordid birth must ascend the chair, and be lifted up to the most eminent offices, and places of power. Coblers must practise physics instead of doctors ; tradesmen must get into pulpits instead of divines, and plowmen must ride to the sessions instead of Justices of the peace. The pretence of levelling is to put all men upon an equal floor, by adding to the inferior so much as may match him with his superior, and taking from the superior so much as may match him with his inferior : and this is sufficiently heretical in policy. But the intencion of our Levellers, we see, is more diametrically opposite to the order of Nature, for it leaves an inequality amongst men as great as ever ; It does not partially alter, but totally cross divine Providence, whilst it elevates that which was depressed, and depresses that which was elevated : and so makes that the head which was the foot ; and that the foot, which was the head. The turbulent Kentish spirits that followed Cade, and Tyler, as they intended the ruin of all men generously born, and qualified, so they professed their intencion, and upon all occasions fell foul upon any, whom they found guilty of inkhorns and pens : but our modern perturbators intend one thing, but profess another ; their mystery is to destroy law under pretext of liberty ; and to supplant liberty under pretext of law. You, which sometimes would appear the grand patron of Law, yet at other times deride the whole profession of lawyers, revile all the benches of Justice at Westminster, spurn at statutes more than 500 years old, set at nought the wisest of our kings, and parliaments, yea and the most salubrious acts that ever our kings and parliaments passed. If any law crosses you, you break through it as great flies use to do through cobwebs : it is sufficient for you to say it was a part of the Norman yoke, or an irrational innovation : nay some of our ancient customs, such as holding up of hands at the bar, are so beyond all ex-

ception, that no man can see why they should be unsuitable to your fancy, but only because they are ancient, and bear the stamp of authority. You, a prisoner, judge and condemn your Judges for going against law : and yet nothing can be more against law, than for Judges to be so judged, and condemned by prisoners ; especially when the sense of the law also is manifestly distorted by such prisoners for upholding things illegal, and opposing things most legal. The like may be said of Liberty, that also as well as Law finds you a propugner in shew, but an impugner indeed ; you bear a buckler in one hand to defend it seemingly, but a sword in the other hand to wound it really. You had the breeding of an apprentice to inable you for trade, and want Latin and French to inable you for Law, or for the true understanding of its terms : yet you nevertheless must interpret Law to the Judges, and by your interpretation make them mere cyphers ; and this is your birth-right due to you, as an Englishman : when as the Judges notwithstanding, because perhaps you deny them to be Englishmen, or to have any share in your birth-right, have nothing to do but to submit to your magisterial interpretation ; by your doctrine the flower of the nation must be subjected to the bran, or else Liberty cannot prosper : the gentleman must be ordered at the peasant's discretion, the Judge must do the mean office of a clerk, and cry Amen to the juryman, (which all hitherto have judged villainous, and servile), or else villainous servility is introduced amongst us. But if Liberty be a public, common benefit, does it not appertain to the gentleman, as well as to the peasant, and to the Judge as well as to the Juror ? nay does it not extend to the securing, and preserving (as far as is possible), of every man in every due right ? or is there not something that is the proper interest of a gentleman *quatenus* a gentleman ? and of a Judge *quatenus* a Judge, as well as there is of a peasant *quatenus* a peasant, and of a Juror, *quatenus* a Juror ? That most excellent, harmonious eutaxy in Heaven which God himself settled from the beginning amongst the Angels, is a thing more perfect than that which we call political liberty on earth ; yet even amongst the Angels there are different thrones and pre-eminences, and though all oppression be excluded, all subordination is not. How Levelling therefore should stand with Liberty amongst men, when it stands not with that more perfect order which is amongst Angels, I cannot see : and yet Levelling itself is far more tolerable, than that extreme ataxy which our levellers seek to introduce under that more plausible name. But you bring authorities for what you say, concerning the jurisdiction of your 12 men, and cite Littleton and Coke for that purpose. All that is cited by Littleton and Coke is this, That in some cases the inquest may render a verdict at large upon the whole matter : that they may have cognizance of the condition of a lease, where they have cognizance of the lease itself ; that

a special verdict may be given in any action, whether the issue be special, or general; that where the inquest may give a verdict at large, if they will take upon them the knowledge of the Law, they may give their verdict generally. In the application of these authorities, you rush hastily upon three gross errors. For first you strain these your authorities, to all cases and questions of law, whether easy or uneasy whatsoever, and this cannot be done without manifest violence to the words of your authors. 2dly. You strain these authorities to all Jurors whatsoever, whether they have knowledge of the law, or not; and yet the words themselves cry out against such a torture. For both Littleton and Coke are express in this, that the Jurors must be such, as take upon them the knowledge of the law. Now we know well that some cases are so plain in law, that the meanest men may understand them: and that Jurors at some times have been so chosen, that they might well take upon them the knowledge of the law in matters of greater difficulty. But he that shall conclude from hence, that all Jurors in all cases understand law, or that their verdicts ought to sway, though they understand not law, shall shew himself strangely ridiculous. For we all know, that of common tradesmen, and husbandmen, such as ordinarily use to be impaneled, there is not one of a thousand that understands law in a point of any intricacy: and we know as well that scarce any thing in the world could be more mischievous in a state, than to leave differences, and suits in law to Judges utterly ignorant, and unlearned. I make no doubt, but if our Levellers could obtrude this imposture upon the world, and procure any favourable reception for it, it would advance their cause much, and exceedingly hasten that general confusion and disorder, which they aim at, I know nothing more conducing to their ends. 3rdly. You strain the word Verdict here beyond Littleton or Coke, for they only say they may give their judgment upon the whole matter; but you infer, therefore the judges are mere cyphers, therefore the judges have no right or power to deliver their judgments, therefore the determination of the judges is no way forcible or obliging. This is a *Non sequitur*. For though the verdict be given in upon the whole matter, and so inclose law as well as fact, yet the binding force of the verdict, as to matter of law, may be derived from the sanction, and ratification of the Judges, not from the jurisdiction of the inquest. And it may well be supposed, that the Jurors may err in matter of law, in which case the Judges must alter the erroneous verdict by a contrary judgment; and that judgment unquestionless shall nullify the erroneous verdict, not the erroneous verdict the judgment. Whereby it plainly appears, that in a verdict upon the whole matter there is no new jurisdiction acquired by the Jurors in matter of law, nor lost to the Judges, forasmuch as the judgment stands good, and obliges not as it is rendered by the Jurors, but as it is confirmed by the Judges.

But in case all your forces should be routed, you have yet another place of strength to retreat to; you say, 'Mens non Actus facit reum;' if the books be found yours, if the matter of the books be found treasonable, yet you having never had any treasonable intention in those books, ought to be judged according to your guiltless intention, not according to your guilty books. This rule of yours cannot be denied to hold in cases where the intention is as manifest as the Act; but in other dubious cases, where the delinquent hath no evidence for his guiltless intention, besides his own avowment, judges and juries observe it not. God therefore, before whose all-piercing eye nothing is obscure, to whom the inward intention is as visible as the outward act, judges of the act by the intention: but in human courts it is otherwise, for man cannot judge the secret intention, but by the overt act; and so where any doubt is of the intention, he leaves that, and safely passes his judgment upon the act, which proof has put out of all doubt. And therefore by God's own law, in cases of Chance Medley, where one neighbour unwittingly and unwillingly had slain another by the fall of an axe, &c. the casual delinquent was absolutely free before God's unerring tribunal above, but not so before his earthly, deceivable judges here below, for if he made not haste to exile himself from his own habitation, he remained obnoxious to the sword of the marshal. Wherefore if the innocency of the mind did no further absolve in contingent transgressions, where no testimony but the act itself came in against the transgressor: you have little reason to expect absolution in such studied, premeditated crimes as you are arraigned for, when no testimony of innocency but your own comes in for you. I have now done with all your more plausible, and specious justifications, and if I have proved most of them to be nugatory, sinewless cavillations, having only the shadow of reason, but nothing of the substance in them, blame me not for handling them under both notions. I come now to your scurrilous, opprobrious, unchristian language, wherein the detestable eruptions of your mouth (being but the envenomed, imbittered ejections of your proud heart) have violated heaven, as well as earth, conspurcated laws, as well as magistrates, and denigrated the actions of our forefathers, as well as ours of modern times. A man would think, that the abyss of hell itself had been ransacked, and rummaged for the making up of some railings, that issue almost daily from your mouth, and of some seditious passages that flow almost weekly from your pen: howsoever I will not say, as Peter said to Magus, you are in the gall of bitterness, I will only say (as I may safely) the gall of bitterness is in you. He that was the recorder of your story, as if you had been too short in your incivilities, has made his margin a supplement to help out what was wanting, and therefore to confute Mr. Nutley's testimony against you, he adds, This is an arrant lie, p. 81. And to confute Judge Nicolls, he adds, What a

lying judge is this Mr. Nicolls? p. 34. Also to cast an odium upon our laws, he calls our term judges, the intolerable bondage of Westminster Hall; and all proceedings in law there, Outlandish, the mere introductions of the Norman tyrant, p. 20. But you were not the penman, you only approved of this story thus being penned, and set your hand as a license for its publication. You say well, you need not to be loaded with more than what you must needs avow to be your own. Some that were absent, as the lord president, p. 12, some that were dead, as the king, p. 36, did not escape your lashes: nay, the whole army, p. 145, though not appearing at all in this business, escaped not without this brand from you, that they had twice rebelled against their creators, lords and masters. But I hasten to those that were present in court, or that were interested in the Court's proceedings. The Attorney General, though a member of the parliament, and a servitor to the state, in place and trust very eminent, is more than ten times abusively treated by you. You ask him, p. 143, What baseness is this in you to use me thus falsely? p. 114, you say he used you, as the Scribes and Pharisees did our Saviour, p. 60. You call him your prosecutor, and that in an extreme foul and dishonest way. Upon divers occasions you tax him of notorious, gross, impudent untruths. See p. 145, 142, 141, 99, 52, 17, &c. The Lord Commissioner Keble told you no prisoner had ever such favour as you; to which you answered immediately, that to disprove what he said, you could shew an hundred precedents to the contrary, p. 49, the margin has this taunt also: "Take notice the Judge stood up, and spake out an appeal to the people." Moreover, p. 121, when he told you the Commissioners could not bear any further delays from you, you returned presently, "Will you not give me breath? if you thirst after my blood, and nothing else will satisfy you, take it presently." Your unreverence to the whole bench is incredible, sometimes you single out the Judges, as the principal members, and sometimes you discharge your rancour against the whole array of your Commissioners. P. 34, You say it is the unjustest thing in the world, that you for your life should have to do with all the Judges (who are all engaged men) that have had above six months time, with the assistance of divers parliament men your enemies, to beat their brains together against you. P. 35, "O Lord, was there ever such a pack of unjust and unrighteous judges in the world? My life is before you, you may take my blood if you please." Page 40, You make the judges greater tyrants than the king, and pray God to deliver you again and again from all such justiciaries. P. 44, "I am willing to die the object of your indignation and malice." P. 46, "Contrary to your solemn promise you make my ignorance in the formalities of law, to be the means of my destruction." You divers times call them faith-breakers, cruel, bloody men, Norman intruders; and wish your innocent blood may be charged upon them, nay

and upon their posterity for divers generations. You frequently tax them of surprising, circumventing, insinaring, murdering you with niceties, and punctilios. I could cite more than 20 more passages to this purpose. As for the whole court, you handle them also no less rudely. P. 146, "you oppress me first, and then go about to hang me as a traitor, for crying out of your oppression: the Lord deliver me, and every honest man from you the vilest of men." P. 148, "There was never such a trial upon English ground as this, where all the legal rights of an Englishman have been denied." P. 31, "All the proceedings hitherto have been so absolutely arbitrary, that it was impossible for me to come provided." P. 64, You make your protest against their unjust and bloody proceedings, and in other places you sometimes appeal from them to the jury, sometimes to your auditors, sometimes to all mankind, sometimes to God. Many quotations might be to this effect. Next after the court, your spiteful, exulcerated mind breaks forth extremely against the parliament, the supreme power of England. P. 146, you say you were imprisoned most unjustly by their power, without any the least shadow, or colour in law many months before their acts were made. P. 117, "It is very hard for me to contest with the present power, whose agents have free liberty to say any thing against me, whilst I am denied all the privileges of an Englishman." P. 86, when the parliament's act of treason was pressed against you, you say, as there may be counterfeited money, so there may be statutes too, and for ought you know this may be one too; and then you desire proof that these are true acts of parliament. P. 79, you except against the testimony of col. Purefoy, because a parliament-man, and so a party against you. P. 47, "Imprisonment, and many provocations were long since put upon me, to make me cry out of oppression; but to hang me therefore by a law made after the pretended crime, is not just." P. 34, "You and the parliament set us long since together by the ears with the cavaliers, to fight pretendently against their injustice." P. 31, "I have been imprisoned 7 months for nothing." P. 14, "All my enemies base, wicked petitions, papers, and books preferred against me were hugged, and embraced by the parliament; but my friends," p. 13, "could get no answer to their petitions, but received slights, abuses, and scorn." P. 11, "Contrary to the Petition of Right, and other wholesome laws, though there hath been 8 years' wars in England, pretendently for preservation of law, and liberty, was I by force of arms apprehended, and proceeded against." Thus rash and harsh you are against this present parliament; and yet not only against this present parliament, for former parliaments also, as often as they side not with you, find you the same man. *Ex gratia*, all the parliaments that settled, or established term judges, and commissions of Oyer and Terminer, you charge of bringing in upon us intolerable burthens, and irrational innovations. And thus in

taking upon you a censorian, and pretorian power over all laws and law-makers, you raise yourself above all that is called God upon earth; and in so raising yourself, you affect a tyranny over us not so truly unchristian as Antichristian. Give me leave now hereupon freely to expostulate with you, and lay aside all partiality. 1. Why will you, being a private person, rise up so fiercely against the government of a state, when you see you must either perish in the design, or compass the same with so vast an effusion of other men's blood? By God's law, every soul is to be subject to the higher powers, and whosoever refuses to stand to the final sentence of the highest power, is punishable by death. Upon this account the magistrate is owned by God, as his anointed vicegerent; and the good king of Judah giving a charge to his judges before they went forth to execute his special commission of Oyer and Terminer, therefore presses them to integrity, because they were to judge for God, and not man. Our law directs you also to be tried by God and your country, but you except against that direction purposely, because you conceive God is not in the court present to pass upon you, but has only an ordinary presence there, such as he has every where. But if the judgment-seat be God's, and not man's, and if the sentence which the judges speak upon that seat be God's, and not man's, (as we must needs believe it is, if we will believe the express words of God's book) how can you deny God to have an extraordinary judicial presence in the court? a presence to try and pass upon you? for this is most plain, if God were not judicially, and extraordinarily in the court, the judges then should be said to determine for man, and not for God, to give sentence in their own names, and not as God's ministers. You will answer, that the men in present authority now at Westminster, which granted this commission, are usurpers, and we are not to look upon usurpers, or imagine that they so represent God, and do God's business, as other legal magistrates that are rightly interested by God himself. Hereunto I shall reply, that judgment in this case (whether the present parliament be rightly the supreme authority of England, or no), belongs not to you being a private person, more than it does to me, or any other man in England. You know also, that when such judgment belongs not to one private person more than to another, and the judgments of all private persons are so apparently divided, as now they are, that no one can decide without endangering the peace of all; that private person can never discharge himself of sedition, and treason, which breaks the common peace out of a fond preference of his own fancy before other men's. In England there are now some that hold the supreme authority to be in the last king's heir absolute, and their endeavours are to bring him in upon his own terms: you and your party, hold it lawful to join with him, upon your terms, but till you join with him, and he submit to your terms, the supreme authority is

not in him: We, and our side, which is now prevalent, after a long dispute in arms, hold this to be a true Parliament, and that the true Parliament is ever the supreme authority of England; and we have not only the decision of the sword (which in such like dubious cases after the last appeal hath been made to it, is so contemptible plea) but also the strongest reason, and majority of suffrages of all the people throughout the land on our side. It is your manifest regret that your party, and the royalists, though they correspond, and conspire together, cannot both counterpoize the third greater, and better party, that stands for the majesty of parliaments. You, and the royalists, have divers times endeavoured to persuade the people, that they are generally against the parliament, and by several acts, and attempts against the parliament, you have put it to the trial, whether the people would adhere to you, or the parliament; yet still the major and better part of the people have declared against you, and continued their loyalty to the parliament. The city of London, if it had been so adverse to the parliament (as was presumed by you, and the royalists both), was strong enough to master the army, (the only advantage of the parliament's you cry out upon) yet when it came to proof, would not draw a sword against the parliament: if these demonstrations will not satisfy you, but you will still plot new commotions, and study to engage the people in new bloody broils, you shew yourselves to be thirsty of human blood, and all your endless covilling pretensions will not absolve you before God. Jehoiadah the priest of the royal line, and a public person, affords us an excellent example; his part was to subvert a manifest usurper, and idolatress, and to re-establish a true prince, of whose title there was not one man in the whole nation that could make any doubt, yet to avoid bloodshed, and the mischiefs of a dubious, open war, he divers years concealed the rightful title, and submitted to the yoke of a heathenish murderous Tyranny, making no insurrection at all, till he was sore to do right to the young king, without causing any destruction of the people. How unlike are your actions to Jehoiadah's, who being no public person, nor interested extraordinarily in the present difference above any other man, will needs hazard the peace of the land against a lawful authority, when you have little hopes of effecting what you strive for, without a vast expence of blood? But in the next place, suppose the power of the parliament were indisputably usurped, as you can never prove it, (for it is still but the nation's power, and what nation ever usurped over itself?) yet by what law of God, or man, is it lawful for such a common person as you are to machinate against it? Herod had usurped over the Jews, the Romans had usurped over Herod, Caesar had usurped over the Romans, yet our Saviour shews himself submissive upon all occasions to all these powers. When he is brought before Annas, he comports himself humbly, and as becomes a

prisoner when he is laid to Caiphas, and presented before the Jewish Counsel, he yields to be examined, and makes there such answers as he knew would be adjudged blasphemous, and capital. When he was turned over to the tribunal of Pilate the Roman Deputy, and transmitted from thence to Herod the Deputy in Galilee, he still made reverent dutiful confessions upon all legal interrogatories, though to the eminent forfeiture of his own life. Yet no man will suppose all these had a proper jurisdiction over our Saviour, or such power as was free from all force, and usurpation. All the apostles also walked in our Saviour's steps, for we read that they though innocent were examined, scourged, imprisoned, and did suffer martyrdom by magistrates in all nations under Heaven, and we read not that any one of them at any one time unreverently treated, or dechined any court, or council, except it were by appeal from the inferior to the superior Judge: yet we may safely believe that some of all the states, and potentates before whom they were convened, might be liable to this exception of yours. You will say, all men in justice ought to be enemies to usurpers, and friends to such as are unduly depressed. I reply on the contrary, that private men, let the case be what it will, of their own heads, or upon their own conducts, are not to rise against a settled usurper, or enterprise any thing that may disturb the common peace: nay even public persons are to prefer the safety of the people, before any lower interest, or right, or law whatsoever. The story of Jehoiadab justifies this, during so many years as he suffered Athaliah; and the story of David also, who by right, and law, was to proceed against Joab for murder; but the superior right, and law of common safety bound his hands many years from doing justice: and yet we cannot say therein, that the not doing of justice was the doing of injustice, inasmuch as he obeyed the superior law rather than the inferior, and chose to spare one guilty murderer, rather than to expose thousands of innocent men to the chance of war. But in the 2nd place, if you will needs suppose you have a right to pronounce this government usurped, and so justly liable to your opposition, yet why do you not then circumscribe yourself within the bounds of this government? how is it, that you assume to yourself as great a prerogative of censuring the acts of other parliaments, as you do of this, and the ordinances of our ancestors as imperiously as you do ours? If you did seem wiser in the laws of England than all the judges, and lawyers of the land, you did arrogate too much to yourself; but when you will pretend to be wiser than the laws themselves, when you will with opprobrious terms revile the legislative power of this nation, and say, that for 600 years together our ancestors, assembled in parliament, were the introducers, or continuers of foolish and slavish acts; you arrogate more to yourself, than any man till this day ever arrogated. In this you challenge the obedience

due to some great, new-raised prophet, such as Mahomet pretended to be amongst the brutish Arabians; or that Vice-God at Rome, who amongst a more dementated, obditerated generation changes times, and customs at his pleasure. In the 3rd place also if you will believe that you have a dictatorial power over all times, and laws past, and present, and so may justify all that you act against them: yet why do you not act against them without such detestable cursings, odious railings, and unsavoury derisions, as your mouth is perpetually defiled with? Michael the Archangel when he was in the lists engaged against God's most rebellious enemy, broke not out into any distempered expressions, nor thought it unbecoming his holy cause to pass the bounds of just reproof. It is likely Satan which found no matter in Michael worthy of reproof, was diverted by his malice into blasphemous provocations, but Michael, notwithstanding all the bitter provocations and all that matter of scandal, which abounded in his traitorous adversary, restrained himself from foul retortions. So our Saviour in the gospel died praying for his murderers, that they might obtain remission, even for that desperately flagitious cruelty, which made the earth tremble, and the sun contract his beams. Stephen also, the first disciple of our Saviour that exposed himself to martyrdom, yet in the very agony of death recommended his sanguinary persecutors to mercy. Wherefore if the Son of God, if angels, if all the apostles use blessing instead of cursing, and if all holy men still pray for their most merciless executioners instead of railing where guilt is never so evident: what is it for you to imprecate heavy judgments upon God's judges sitting on his bench to speak his sentence? And from what kind of spirit do your filthy upbraidings, and sarcasms proceed, when you pour them not only upon magistrates, but upon righteous magistrates, such as offer you no wrong, but suffer much at your hands? Certainly if these things proceed from a right Christian spirit, we must believe that the mild white dove which descended upon our Saviour in the river of Jordan, has now changed wings with the black, carnivorous raven. Paul once out of a sudden passion, and incogitancy, called an high priest "painted wall" (a term not undue to the man, though ill applied to the ruler) but being presently returned to himself, he recovered his wonted meek and patient temper; and though he had suffered a most unparalleled piece of injustice from a wicked man, he was not ashamed after to retract, and check himself publicly for deriding a wicked ruler. Tell me then seriously, is this contumelious spirit that rages in you the same that possessed Christ and his disciples? Can you imagine, that you who not only defy God's ministers of justice, in the place of judicature, and speak vilifyingly of the highest of powers, but also harden yourself therein, and trumpet it forth to the world, as if you had achieved thereby some glorious conquest, are of the same spirit, as

those which went like sheep to the slaughter, and never opened their mouths before their shearers? St. Paul condemns in himself an unwitting, precipitated taunt against a judge very impious and scandalous, but you think you may justly pride yourself in blaspheming many righteous judges, and this you do at such a time, in such a place, and before such an auditory, that your blasphemy must needs reach God mediately, though it strike his anointed viceregents immediately. I can say no more but this, the same thing which in your own practice makes you boast, makes me, being practised by another, tremble. Lastly, if you must have a license to oppose authority; to oppose all manner of authority, ancient as well as modern; and further, if you must be licensed to join all manner of reproaches, execrations and blasphemies to your opposition: yet what means this, that you upbraid other men most of that, which you are most apparently guilty of yourself; and for the most part asperse and calumniate those whom you take for enemies with such things, as all men know to be most apparently false? When you have insolently tyrannised over our most ancient laws, and customs, and the powers from whence they were derived; when you have pursued our high court of parliament with bitter exprobrations; when you have entertained the whole bench of your judges with such language as is only due to the basest, and worst of men; when you have obstructed the proceedings against you with the most trifling niceties, and scruples in law that ever were invented; when you have spent your strength, and tired your lungs (as yourself complains) not by pleading, but by seeking an exemption from pleading, and therefore have scarce allowed any freedom to the Court to answer you; you nevertheless complain, that all law and right has been denied to you: that it is the sworn design of the parliament to compass your life by indirect means; that your judges have insolently over-awed you; that you have been ensnared with mere punctilios, and formalities of law; that freedom of pleading hath been taken from you. Never was case more clear in the world than yours is: if there were no court to judge your books seditious, nor no testimony to prove the books yours, yet I am persuaded there is scarce a man in England that doubts of either; that very jury that pronounced you not guilty of composing those books after proof by witnesses, I am most confident did in their hearts believe you unquestionably the author of them, before they heard any witness speak at all. Violent presumptions heretofore were held ever sufficient convictions, and as good as legal testimonies, and yet though all men's consciences in your case are satisfied with violent presumptions, and violent presumptions are now seconded with competent, pregnant, abundant testimonies, that you are the author of these books: and though you yourself think not fit to deny them, yet you are not ashamed to inveigh

against them, that judge you to be the composer of them. I cannot indeed imagine that thing of which you are ashamed: if you are ashamed of any thing, it is the absolute denial of your books, for which you are indicted; but I am persuaded it is some other respect, and not shame, that makes you abstain from that denial. You seem frontless enough, when you cry out upon your easy, contemned judges for intrapping, and oppressing you: but when you cry out upon their snares, and oppressions at the same time that you call them shadows, and non-entities, upbraid them as Norman intruders, denounce against them as wilful, perjured murderers, and in very deed make yourself a judge at the bar, and arraign them as your prisoners on the bench; you seem more impudent than impudence itself: your want of blushing is enough to make not only friends, but even strangers, and opposites, to blush for you. But you that acknowledge no law, unless it be consonant to your own humour, and unless it receive its obliging force from your sanction, how can you offend? And you that cannot offend, why should your face be stained with that ordinary tincture of modesty that abashes other men? Human rules and precedents are all liable to your condemnation: if you say they are irrational, or savour of innovation, that is sufficient to over-rule them; and as for Divine Authorities, it is in your breast to interpret them, and no man's else, whereupon they are made Lesbian rules to you, and they must not conform, but must be conformed to your judgment, *ex. gra.* The four Evangelists testify, that our Saviour being presented in judgment before divers tribunals, made such pleas, and confessions as drew on upon himself a capital sentence, and were the only evidence, that either the Jews had to condemn him of blasphemy, or the Romans of sedition. You nevertheless say, that our Saviour by silence avoided the danger of his examiners, and left you a warrant thereby to conceal your guilt from the judges, and to evade that danger of condemnation which the prescription of our laws would else entangle you in. When the States Attorney General presses you for an answer to his proofs, and not mere allegations, which make you the author of seditious books: you more than once aver, that our Saviour shook off his interrogatories with an eluding answer; and therefore in imitation of Christ you say, 'Thou 'Mr. Prideaux affirmest, I am the author of 'seditious books, but prove it if thou canst.' This is rough handling of human magistrates, and laws, but this is worse handling of inspired writers, and worst of all is the false gloss you set upon our Saviour's actions. Our Saviour being demanded by Caiphas, in the counsel of the Jews, Whether he were the Son of God, or no, according to Matthew and Luke, returned answer, 'Thou saidst it;' and Mark repeating the same answer, makes it a pure affirmation, or an assent confirming what the high priest said; for Mark's relation, which must be the

same as the other evangelists' was, answers positively and fully to the question, 'I am the Son of God.' Secondly, All these evangelists record this further of our Saviour, that immediately after his answer to the high priest, he proceeded to tell the council, that they themselves should one day see him sitting on God's right hand, and so be convinced of that now they would not believe. 3dly, The council understood our Saviour's answer to be affirmative and positive; for upon that answer, according to all the evangelists, he was instantly condemned of blasphemy, from the confession of his own mouth. Neither did our Saviour, being examined before Pilate concerning his regal interest, give an evading answer. Pilate's question was, 'Art thou a king?' Our Saviour's answer was, 'Thou sayest it.' But to shew that this was a positive affirmation of the thing questioned, our Saviour added immediately, 'To this end was I born, and for this cause came I into the world, that I should bear witness unto the truth.' And we find that Pilate doubted not of our Saviour's meaning, whether it were affirmative or elusive. This is therefore an high violation of divine authority, that you shall call those answers and pleas of our Saviour dilatory and fallacious, which the evangelist makes to be so plain, and the Jewish and Roman magistrates both entertained as so positive; and that you should flatly say, our Saviour patronized obstinate silence in all delinquents, and therefore would not reveal truth, when he says directly of himself, that he was born, and sent into this world to bear witness to the truth. 4thly, How can you imagine that our Saviour's silence to some impertinent questions was any justification of your not pleading, when our Saviour had not the same reasons of silence, as you and other delinquents have and pretend for? For, first, our Saviour was guilty of nothing which, in justice, could take away his life, or expose him to any other the least lash of the law. If you will believe the Roman judge, before whom he was tried, he was convinced, and thrice laboured to save him, knowing that the Jews, of envy, prosecuted against him; and being driven to wash his hands of so foul and murderous a sentence, argued with the Jews, that he had not only examined him himself, and found no capital delinquency in him, but had also sent him to Herod, and by Herod he was also sent back acquitted. This makes our Saviour's case very different from yours. 2dly, Our Saviour knew his doom was unavoidable, and so he could not make use of silence upon the same grounds as you do. 3dly, Our Saviour's silence was not obstinate, against any clear law, as yours is. 4thly, It was not general or continual. When he was questioned, either about his divinity or regality (things questionable in law) he gave direct answers; and even when he was questioned extravagantly about his disciples, or the nature of truth, or his doctrine, after some space of modest silence, he gave reasons for his silence; he told them, they were resolved

before hand not to believe him, and that he had always taught openly, and not in corners, so that the testimony of his auditors and spectators would be more proper in matters of that nature than his own. Hereupon Pilate received satisfaction, as also Herod, though all their impertinent questions were not presently answered. And when Pilate washed his hands before the people, in token of his innocency, and pleaded earnestly for his enlargement more than once or twice, he told the people plainly, that Herod, to whom he had sent him to be examined, had sent him back again, being of his judgment, and finding nothing worthy of death in him. Lastly, If our Saviour had refused to answer Caiaphas, Herod, and Pilate, who had not due jurisdictions over him, this affords no plea nor patronage for your peremptory silence: forasmuch as our Saviour was a king *de jure*, though he would not take upon him the office of a king *de facto*; and it may be believed, that in some acts of his he did transcend the capacity and condition of a mere private person, in which he is not imitable by you. I shall infer, therefore, that you, when you cite our Saviour's example and practice, to justify your opposing judges and laws, and to smother treason and frustrate judgment, contrary to that which is asserted by all the evangelists, you do blasphemously and impudently make God the countenancer of sin, that you may make man the apter to sin against God.

The 5th and last matter of scandal in your book, is, your double dealings with the Jury; for though your 12 men are most religiously obliged to bring in a verdict without favour or fear, you nevertheless endeavour both ways to force them from their religious obligations as well by terror, as by arts of embracery. On one side, you are their brother citizen, a great honourer doubtless of your city matriculation: some of them you know to be honest men, as you are a profound metapocopist, there are lineaments of honesty drawn in their very faces, and the whole array of them has this preferment from you, that they were the only supreme dispensers of justice in England, and that the judges that sit aloft in scarlet robes, are but clerks to say Amen to their verdicts: and this you pronounce as a more profound jurist. On the other side, lest these gentle stroakings should not sufficiently win upon them, you place some hundreds of your myrmidons behind in ambuscado, who are ready to break forth with mighty hums, and acclamations, at the closing of your Defence, and before the attorney general enters upon his Reply. You did conjecture doubtless that your 12 jurors, half of them being congregated out of Chick Lane, Picket-hatch, and the other suburbs of Smithfield, without one butcher amongst them all, would be apt to shrink at such a new, unexampled impression. Former times would have looked strangely upon such attempts, and such divers assaults made upon a jury: but in you all

frauds and riots are pious and plausible, so they may achieve to you a conquest over your opposites; say in all your surprisals and oppressions of other men, you must have leave to complain, that you are surprized, oppressed, and cut off from all right by a state of conspirators.

Sir, I could now let the reins of my discourse looser, and take occasion to range farther, (for since the writing, and printing, of this letter, I have seen some other additions, and supplements of yours, or your friends, about your trial, and I may perhaps hereafter animadvert upon them: But I will not at present pursue you too far; I will rather choose to give myself a sudden stop.

The angels that fell from Heaven had nothing to seduce them unto so desperate a revolt besides their own excellent natures; there was not in heaven any other object that could tempt, or pervert them. Had they dutifully and piously limited their contemplations to the transcendent blessedness, and infinite perfection of their Creator, they had not so fondly enamoured themselves, upon themselves, nor dazzled their own eyes with their own created beauty: but when their eyes were once dazzled with objects less amiable, their devotions were easily alienated from objects more amiable, and that alienation in them was most ungracious, and damnable. Neither did excessive, doating self-love only exile the angels out of Heaven, but also, men out of paradise; for Adam likewise, judging himself nearest to himself, and so thereupon confining all his passions, or the supreme sway of his affections, to himself, erroneously thought himself worthy of an equality with his Maker: and so not laying to heart the greatness and goodness of God, but blinding himself with an undue zeal to his own person, he most unnaturally made himself God's rival, as if he himself were capable of divine knowledge, or God deducible to human imbecility. It is not worth inquire, whether Adam's will first darkened his understanding, or his understanding first captivated his will: we know Adam had the principle of knowing, and the principle of affecting good in an eminent degree: and that he sinned against both those principles when he valued a finite, derivative, obliged excellency in himself above infinite, original, obliging excellency in his God. For in the conception, and birth of sons, it often happens, that at the same time the understanding contracts darkness from the fictions vehemence of the will: and the will contracts obstinacy from obscurity in the understanding. And I think, we may safely believe that Adam's understanding was too inactive, and remiss at the same instant, for that it did not further improve, and feed the will by sublime, restless contemplations: and at the same instant that his will, having already received so much light from the understanding, was too cold and unaspiring, for that it did not still covet solid solace from objects more glorious,

and to that end re-solicit eagerly the understanding for profounder illuminations. Such was the origination, and semination of sin in Adam, and such is still the transduction and propagation of sin in Adam's posterity: there is no difference but this: we are not guilty of our own sins only which we daily commit ourselves, as we naturally partake of Adam's frailties, and are left obnoxious to a thousand new temptations thereby; but also of his first transgression, as we were morally engaged in the same covenant, and so left obnoxious to the same punishment. We remain therefore all far more apt now, than he was, to adore ourselves, and to circumscribe our own blind affections within the circle of our own excellencies: and this is so eminent in some men, that ignorance no sooner begets arrogance in them, than arrogance begets impudence: and impudence begets wilfulness, and an outrageous hardness in malice. Sir, if you who know yourself to be of Adam's race, would deal strictly with yourself, and impartially enquire into the cause that makes you so far to postpone all powers, laws, professions of men to yourself, and most immodestly to boast of those things in yourself, which you would disdain in other men, and which other men think as disdainable in you: you would soon discover your self-love had quite put out your eyes, and then betrayed you into the ambuscades of all those daring sins that use to fight under the banners of violent insolence, and of uncontrouled impudence. The main canker that festers inwardly, and infects your most retired thoughts, is this, that you see other men promoted in the commonwealth to places of honour and power before you, whereas you in worth, and value, promote yourself far before them, nay, and all others whatsoever: and this gross error does not only swell you into disdain, and malice implacable against other men, but also inflames you towards yourself with arrogance intolerable, and arms you with immodesty most unamalleable. You ought here to consider, that as to other men you are no competent judge of their parts and deportments, more than every other private man in England is: and when you see so many other men in England give a contrary judgment to yours, you ought to suspect your own judgment rather than to despise theirs. It is well known who those men are, that are most obnoxious to your emulation: and let but their enemies judge, let their most conjured foes give sentence in this cause, whether they deserve your emulation, or no: and even they will contradict you herein, and tell you that they fear, and admire, what you deride, and rail upon. Then as to yourself, whom you adore, and court as the most exquisite piece of mankind, and upon that account censure whole professions, whole states, nay and whole ages not complying with your fancy: you ought to consider, that of all men, you are the most incompetent judge in your own case. Omit those whom you repute now your diametrical enemies, though they are the major, and

better part of the nation, and ask the royalists, (whom you look upon as your late adopted friends) or any others unconcerned, if you conceive there are any such: ask them what value they set upon you, and doubtless they will be bold to tell you, that you are an incendiary and innovator; as far short of Perkin Warbeck, as you are beyond Wat. Tyler. I know there is a party of your adherents, that seek to foment these prodigious high conceits in you: and they perhaps may amount to some ten, or twenty thousand heads in all: but if my intelligence fails not exceedingly, the greatest part of them consists of women, boys, mechanics, and the most sordid sediment of our plebeians, and only some few are royalists, or turbulent levellers, who rather make use of your fury, than admire your policy; and employ you as an instrument, rather than follow you as a head. But if you think men, whether friends, enemies, or neutrals, are apt to deceive, and as apt to be deceived, and therefore unfit witnesses, or informers in this case, fix your thoughts more studiously upon things: consider your own ways, and positions, as I have here more nakedly presented them to your view. You see your main endeavour is, to open a way, and maintain, that any private, single person may dispute, nay damn any command, law, custom, or power whatsoever, and lawfully frame parties to abet him in his disturbance of the common peace by any means whatsoever: that the diffusive, or rather confusive body of the people may be appealed unto, by malcontents in any common cause, although it be so vast a body that it is scarce to be congregated, or rightly ordered, or consulted with in any one place, or at any one time, when some one fundamental point is to be assented unto, or dissented: and much less is it fit for the ordinary administration, and exercise of rule in ordinary cases, as often as private men shall find themselves aggrieved: that all study of law and policy is mischievous, and therefore the judgment of all difficulties, and difference ought to be expected from unlettered mechanics, plebeians, not from such as are nobly descended, such as have been versed in state-business all their days, and such as have made law their study from their youth: that the nation ought not to have any one common place of resort for justice, such as Westminster-Hall is: but for the better cantoning of the commonwealth, and dissecting it into several independent (and by consequence repugnant) bodies, in each county there ought to be a several tribunal: in which tribunal the most ignorant and meaner faces of the multitude ought to possess the highest chair: that popular liberty ought to be enlarged beyond all rational political bounds, so that no private subject ought to pay any tax for defraying the public charge, unless it stand with his own liking: nor ought any felon, or traitor,

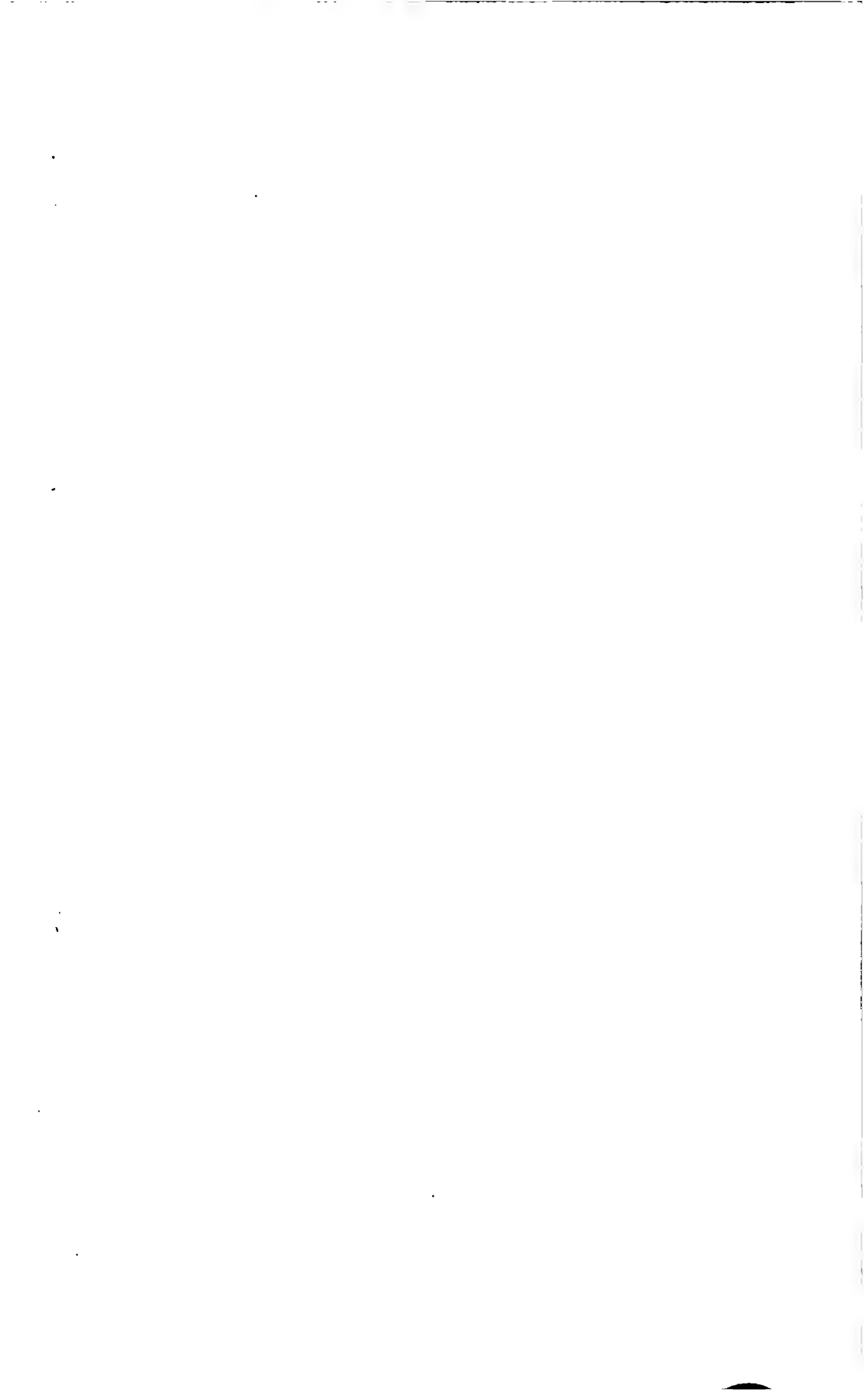
be examined, or held to any form of trial, further than it shall please his own humour. These are the crude traditions which your levelling sect abides by: now let not only those which have been bred under English laws, but let all other nations that imbrace the Roman civil Institutes embodied by Justinian, nay let Heathens, Turks, Jews, let all men of former ages, as well as of this present, declare, if any thing can be invented more destructive to society, and the congregative disposition of mankind, than these traditions are. No more need be said, if you profess the subversion of your country, and a general enmity to the kind of man, your philosophy must be held impious, though not stolid: but if you propose these things for the good of your country, and your kind, you will be held, as stolid, as impious: but what shall I say? in case self-love has wholly dementated you, all that I can press will be to no purpose, neither can the various testimonies of men, nor the irrefragable evidence that shines out of common maxims, nor the experience of all ages, convince you, that you are to credit any thing besides yourself. What your present temper is therefore, whether flexible by counsel, or inflexible, I cannot tell: but I must needs tell you this: for a close of all. Since you have acted your part so outrageously, it leaves an offence, and a regret too upon me: that your commissioners should act so tenderly: that the jury should act so disloyally; and that London should be the scene, where hands should be clapt so unworthily.

P. S. Sir, I had sooner dressed, and speeded these my plain, friendly animadversions, had I been in England at your arraignment, or if I had sooner recovered my health after my coming into England: therefore let not delay and the interposition of so many months expose me to your mis-interpretation. I had also kept these papers from the press, had you only been concerned in them; but when my second thoughts suggested to me, that I was bound not to reprove you alone, but your abettors, and partakers also, and that the charity of my reproof ought not only to extend to the conviction of you, and yours, but also to the confirmation of all your dissenters, I was induced to make them public: wherefore pray, let this apologise for me in that behalf. Adieu.

Yours in the bonds of Christianity. H. P.

Lilburne was afterwards, January 20, 1652, banished by the Parliament, and went away on January 28, but returned the 14th June 1653, for which he was tried at the Old Bailey, upon the late Act for his Banishment, the 20th August following, but was acquitted by the Jury, for which they were examined before the Council of State; for which Trial and examination, see No. 193.

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